

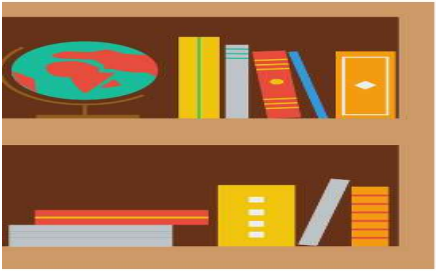
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**Investment in Safe-
Notes Outside India**

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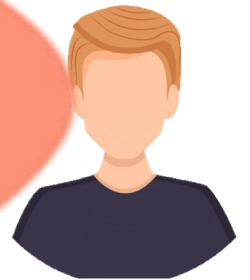




Natasha
(Indian Resident)

Hello, Mr. FEMA Gyani! I have been investing in foreign companies since last 2 years. One of my friend suggested me to invest in Start-ups as they give higher returns. So I am considering to invest in **Jack and Jill Inc.**, a tech based startup in US. However, I came to know that they are issuing Safe Notes instead of Equity Shares and I am not aware about the same . Can you please help me?

Yes Natasha! Safe Notes(**Simple Agreement for future Equity**) is a type of deferred equity legal contract that entitles investors to receive a company's equity securities contingent upon certain events such as subsequent rounds of funding. They also became popular because they do not accrue interest while outstanding and have no maturity date.



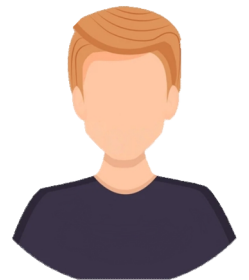
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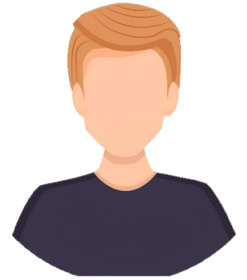
Okay! But if equity is based on contingent event , then what is the benefit of investing the money now?

Wait. Let me explain you the whole process how the Safe Notes actually works. So, when the company incorporates it cannot be assigned a value because there are very less funds in the co. Safe notes work by allowing a company to postpone its valuation until a later date.



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The General process of Safe-Notes is as follows:



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1 An investor provides seed money in exchange for promised future equity

2 The company uses the original investment to build the business.

3 Once progress has been made, then the company will find another investor, giving it what is known as post-money valuation.

4 Then calculate the company's new price per share with this information.

5 At last, convert the SAFE note into the applicable number of shares in the company and distribute them to the SAFE investor.



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Okay! I understand what is safe note. But Can I invest in safe notes of a US Startup?

No Natasha, You cannot invest in safe notes. Let me explain you in detail. The definition of **ODI** says



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- a** Acquisition of any **unlisted equity capital** or subscription as a part of the MOA of a foreign entity. **OR**
- b** Investment in **10% or more of the paid up equity capital** of a listed foreign entity **OR**
- c** Investment with control where **investment is less than 10% of the paid- up equity capital** of a listed foreign entity

Since as per the definition of ODI it means investment in Equity Capital . **AND**

Equity Capital means Equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity, which is in the nature of **fully compulsorily convertible instruments**.

From the above definition it can be interpreted that ODI can be only done in equity share capital. And the definition of Equity share capital does not cover safe notes as Safe notes are neither debt nor Equity, it is an agreement for future Equity. It is merely a **promise of equity shares** and do not provide an immediate right to the investor until the triggering event takes place and the note is converted.

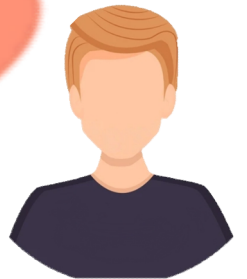
Therefore, ODI cannot be done in Safe Notes.

Okay. Got it. Thanks.!



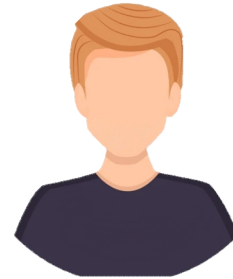
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Thank You



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Comments

Feedbacks

Suggestions



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