



RESERVE BANK OF INDIA  
Foreign Exchange Department  
Central Office  
Mumbai - 400 001

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RBI/2012-13/15  
Master Circular No.15 /2012-13  
(Updated as on April 01, 2013)

July 02, 2012

To,  
All Category - I Authorised Dealer banks

Madam / Sir,

**Master Circular on Foreign Investment in India**

Foreign investment in India is governed by sub-section (3) of Section 6 of the Foreign Exchange Management Act, 1999 read with [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), as amended from time to time. The regulatory framework and instructions issued by the Reserve Bank have been compiled in this Master Circular. The list of underlying circulars/notifications is furnished in Appendix. In addition to the above, this Master Circular also covers the area of '**Investment in capital of partnership firms or proprietary concern**' which is regulated in terms of Section 2(h) of Section 47 of Foreign Exchange Management Act, 1999, read with [Notification No. FEMA 24/2000-RB dated May 3, 2000](#).

2. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2013 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Rudra Narayan Kar )  
Chief General Manager



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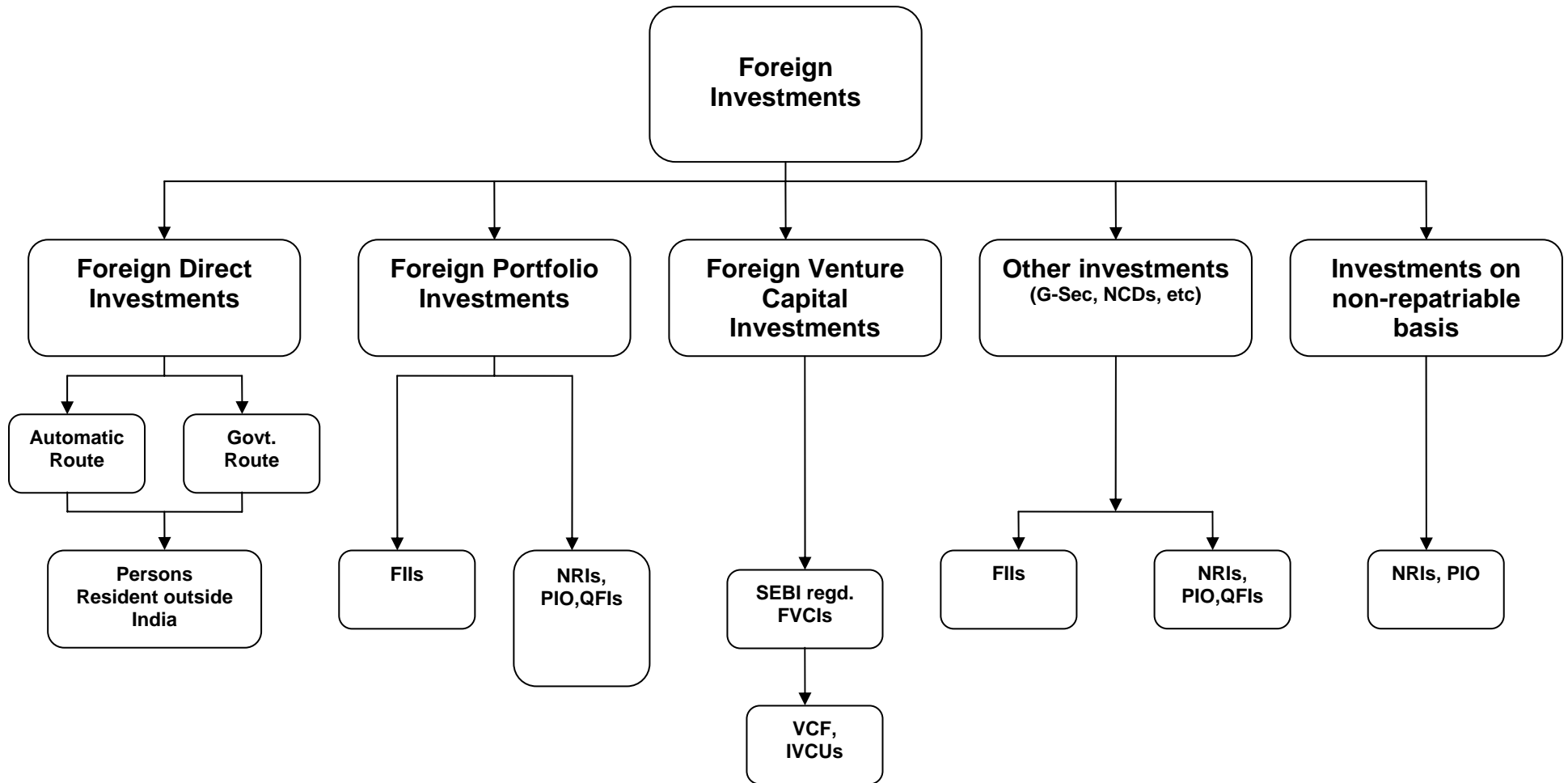
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## Part – I

### Foreign Investments in India—Schematic Representation:





## Section - I: Foreign Direct Investment

### 1. Foreign Direct Investment in India

Foreign Direct Investment (FDI) in India is :

- undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a “Consolidated FDI Policy Circular ” on an yearly basis on March 31 of each year (since 2010) elaborating the policy and the process in respect of FDI in India. The latest “Consolidated FDI Policy Circular” dated April 10,2012 is available in public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department of Industrial Policy and Promotion –
- [http://www.dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2012.pdf](http://www.dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf) governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999. FEMA Regulations which prescribe amongst other things the mode of investments i.e. issue or acquisition of shares / convertible debentures and preference shares, manner of receipt of funds, pricing guidelines and reporting of the investments to the Reserve Bank. The Reserve Bank has issued Notification No. FEMA 20 /2000-RB dated May 3, 2000 which contains the Regulations in this regard. This Notification has been amended from time to time.

### 2. Entry routes for investments in India

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible preference shares<sup>1</sup> of an Indian company by non-residents through two routes:

- o **Automatic Route:** Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

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<sup>1</sup> "Shares" mentioned in this **Master Circular** means equity shares, "preference shares" means fully and mandatorily convertible preference shares and "convertible debentures" means fully and mandatorily convertible debentures [cf. [A. P. \(DIR Series\) Circular Nos. 73 & 74](#) dated June 8, 2007]



- **Government Route:** Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

### 3. Eligibility for Investment in India

- (i) A person resident outside India<sup>2</sup> or an entity incorporated outside India, can invest in India, subject to the FDI Policy of the Government of India. A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI Scheme, with the prior approval of the FIPB. Further, a person who is a citizen of Pakistan or an entity incorporated in Pakistan, may, with the prior approval of the FIPB, can invest in an Indian company under FDI Scheme, subject to the prohibitions applicable to all foreign investors and the Indian company, receiving such foreign direct investment, should not be engaged in sectors / activities pertaining to defence, space and atomic energy.
- (ii) NRIs, resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in **free foreign exchange** through normal banking channels.

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<sup>2</sup> "person resident in India" means—[As per FEMA Sec 2(v)]

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than—

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

- "person resident outside India" means a person who is not resident in India; [As per FEMA Sec 2(w)].



- (iii) Overseas Corporate Bodies (OCBs) have been de-recognised as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under adverse notice of the Reserve Bank can make fresh investments under the FDI Scheme as incorporated non-resident entities, with the prior approval of the Government of India, if the investment is through the Government Route; and with the prior approval of the Reserve Bank, if the investment is through the Automatic Route. However, before making any fresh FDI under the FDI scheme an erstwhile OCB should through their AD bank take a one time certification from RBI that it is not in the adverse list being maintained with the Reserve Bank of India.

ADs should also ensure that OCBs do not maintain any account other than NRO current account in line with the instructions as per [A.P. \(DIR Series\) Circular No. 14 dated September 16, 2003](#). Further, this NRO account should not be used for any fresh investments in India. Any fresh request for opening of NRO current account for liquidating previous investment held on non-repatriation basis should be forwarded by the AD bank to Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai. However, ADs should not close other category of accounts (NRE / FCNR / NRO) for OCBs which are in the adverse list of the Reserve Bank of India. These accounts are to be maintained by the respective AD banks in the frozen status.

#### **4. Type of instruments**

- i) Indian companies can issue equity shares, fully and mandatorily convertible debentures and fully and mandatorily convertible preference shares subject to the pricing guidelines / valuation norms and reporting requirements amongst other requirements as prescribed under FEMA Regulations.
- ii) Issue of other types of preference shares such as, non-convertible, optionally convertible or partially convertible, have to be in accordance with the guidelines applicable for External Commercial Borrowings (ECBs).
- iii) As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy.



## 5. Pricing guidelines <sup>3</sup>

- **Fresh issue of shares:** Price of fresh shares issued to persons resident outside India under the FDI Scheme, shall be :
  - on the basis of SEBI guidelines in case of listed companies.
  - not less than fair value of shares determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow Method (DCF) in case of unlisted companies.

The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical know how fee / royalty or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

- <sup>4</sup> However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.
- **Preferential allotment:** In case of issue of shares on preferential allotment, the issue price shall not be less than the price as applicable to transfer of shares from resident to non-resident.
- **Issue of shares by SEZs against import of capital goods:** In this case, the share valuation has to be done by a Committee consisting of Development Commissioner and the appropriate Customs officials.
- **Right Shares:** The price of shares offered on rights basis by the Indian company to non-resident shareholders shall be;
  - i) In the case of shares of a company **listed** on a recognised stock exchange in India , at a price as determined by the company.
  - ii) In the case of shares of a company **not listed** on a recognised stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to the resident shareholders.

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<sup>3</sup> As per [Notification No. FEMA 205/2010- RB dated April 7, 2010](#).

<sup>4</sup> Updated in terms of [A.P.\(DIR Series\) Circular No. 36 dated September 26, 2012](#)





- **Acquisition<sup>5</sup> / transfer of existing shares (private arrangement).** The acquisition of existing shares from Resident to Non-resident (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII) would be at a;

- (a) negotiated price for shares of companies listed on a recognized stock exchange in India which shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines, as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares. The price per share arrived at should be certified by a SEBI registered Merchant Banker or a Chartered Accountant.
- (b) negotiated price for shares of companies which are not listed on a recognized stock exchange in India which shall not be less than the fair value to be determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow(DCF) method.

Further, transfer of existing shares by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) to Resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.

- The pricing of shares / convertible debentures / preference shares should be decided / determined upfront at the time of issue of the instruments. The price for the convertible instruments can also be a determined based on the conversion formula which has to be determined / fixed upfront, however the price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments, in accordance with the extant FEMA regulations.

## 6. Mode of Payment

An Indian company issuing shares /convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares /convertible debentures by:

- (i) inward remittance through normal banking channels.

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<sup>5</sup> [A.P.\(DIR Series\) Circular No. 49 dated May 4, 2010](#)



(ii) debit to NRE / FCNR account of a person concerned maintained with an AD category I bank.

(iii) conversion of royalty / lump sum / technical know how fee due for payment /import of capital goods by units in SEZ or conversion of ECB, shall be treated as consideration for issue of shares.

(iv) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.

(v) debit to non-interest bearing Escrow account<sup>6</sup> in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR(B) / Escrow account the amount of consideration shall be refunded. Further, the Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

## **7. Foreign Investment limits, Prohibited Sectors and investment in MSEs**

### **a) Foreign Investment Limits**

The details of the entry route applicable and the maximum permissible foreign investment / sectoral cap in an Indian Company are determined by the sector in which it is operating. The details of the entry route applicable along with the sectoral cap for foreign investment in various sectors are given in Annex -1.

### **b) Investments in Micro and Small Enterprise (MSE)**

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<sup>6</sup> Issued vide [A.P. \(DIR Series\) Circular No 58 dated May 2,2011](#), wherein Escrow account can also be used for received for amount of consideration and also for keeping securities to facilitate FDI transactions subject to the terms and conditions as given in the Circular. The account has to be maintained with the Authorized Dealer Category – I bank or an SEBI authorised Depository Participant. The guidelines in the circular are applicable for issue of fresh shares as well as for transfer of existing shares.



A company which is reckoned as Micro and Small Enterprise (MSE) (earlier Small Scale Industrial Unit) in terms of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, including an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park, and which is not engaged in any activity/sector mentioned in Annex 2 may issue shares or convertible debentures to a person resident outside India (other than a resident of Pakistan and to a resident of Bangladesh under approval route), subject to the prescribed limits as per FDI Policy, in accordance with the Entry Routes and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.

Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for the MSE sector may issue shares to persons resident outside India (other than a resident/entity of Pakistan and to a resident/entity of Bangladesh with prior approval FIPB), to the extent of 24 per cent of its paid-up capital or sectoral cap whichever is lower. Issue of shares in excess of 24 per cent of paid-up capital shall require prior approval of the FIPB of the Government of India and shall be in compliance with the terms and conditions of such approval.

### **c) Prohibition on foreign investment in India**

(i) **Foreign investment in any form** is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities<sup>7</sup>:

- (a) Business of chit fund, or
- (b) Nidhi company, or
- (c) Agricultural or plantation activities, or
- (d) Real estate business, or construction of farm houses, or
- (e) Trading in Transferable Development Rights (TDRs).

(ii) It is clarified that “real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include

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<sup>7</sup> [As per Notification no. FEMA 1/2000-RB dated May 3, 2000](#)



development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

It is further clarified that partnership firms / proprietorship concerns having investments as per FEMA regulations are not allowed to engage in print media sector.

(iii) In addition to the above, **Foreign investment in the form of FDI** is also prohibited in certain sectors such as (Annex-2)<sup>8</sup>:

- (a) Lottery Business including Government /private lottery, online lotteries, etc.
- (b) Gambling and Betting including casinos etc.
- (c) Business of Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights (TDRs)
- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

**Note:** Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

## **8. Modes of Investment under Foreign Direct Investment Scheme.**

Foreign Direct Investment in India can be done through the following modes:

### **8. A. Issuance of fresh shares by the company**

An Indian company may issue fresh shares /convertible debentures under the FDI Scheme to a person resident outside India (who is eligible for investment in India) subject to compliance with the extant FDI policy and the FEMA Regulation.

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<sup>8</sup> As per Notification no. [FEMA 20/2000-RB dated May 3, 2000](#)



## **B. Acquisition by way of transfer of existing shares by person resident in or outside India**

Foreign investors can also invest in Indian companies by purchasing / acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents / NRIs for acquisition of shares by way of transfer in the following manner:

### **8 B.I Transfer of shares by a Person resident outside India**

- a. **Non Resident to Non-Resident (Sale / Gift):** A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs).

**Note:** Transfer of shares from or by erstwhile OCBs would require prior approval of the Reserve Bank of India.

- b. **NRI to NRI (Sale / Gift):** NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

c. **Non Resident to Resident(Sale / Gift):**

- (i) **Gift:** A person resident outside India can transfer any security to a person resident in India by way of gift.
- (ii) **Sale under private arrangement:** General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India **in case where transfer of shares are under SEBI regulations and where the FEMA pricing guidelines are not met**, subject to the following
  - (a) The original and resultant investment comply with the extant FDI policy/ FEMA regulations;
  - (b) The pricing complies with the relevant SEBI regulations (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI (SAST) and buy back); and



- (c) CA certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
- (d) Compliance with reporting and other guidelines as given in Annex 3.

Note: Transfer of shares from a Non Resident to Resident other than under SEBI regulations and where the FEMA pricing guidelines are not met would require the prior approval of the Reserve Bank of India.

- iii) **Sale of shares/ convertible debentures on the Stock Exchange by person resident outside India:** A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

#### **8.B.II Transfer of shares/convertible debentures from Resident to Person Resident outside India**

A person resident in India can transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the following along with pricing, reporting and other guidelines given in Annex - 3.

- a) where the transfer of shares requires the prior approval of the FIPB as per extant FDI policy provided that;
  - i) the requisite FIPB approval has been obtained; and
  - ii) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
- b) where SEBI (SAST) guidelines are attracted subject to adherence with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
- c) where the pricing guidelines under FEMA, 1999 are not met provided that:



- i) the resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
  - ii) The pricing for the transaction is compliant with specific/explicit, extant and relevant SEBI regulations (such as IPO, book building, block deals, delisting, open/ exit offer, substantial acquisition/SEBI(SAST)); and
  - iv) CA Certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
- d) where the investee company is in the financial services sector<sup>9</sup> provided that:
- i). No Objection Certificates (NOCs) are obtained from the respective regulators/regulators of the investee company as well as the transferor and transferee entities and such NOCs are filed along with the Form FC-TRS with the AD bank; and
  - ii). The FDI policy and FEMA Regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

Note: The above general permission also covers transfer by a resident to a non-resident of shares / convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route of the Reserve Bank, as well as transfer of shares by a non-resident to an Indian company under buyback and / or capital reduction scheme of the company. However, this general permission would not be available for the above transactions if they are not meeting the pricing guidelines or in case of transfer of shares / debentures by way of gift from a Resident to a Non-Resident / Non-Resident Indian.

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<sup>9</sup> Financial services sector includes Banks, NBFC, Insurance, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.



### **8.B. III Transfer of Shares by Resident which requires Government approval**

The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval :

- (i) Transfer of shares of companies engaged in sector falling under the Government Route.
- (ii) Transfer of shares resulting in foreign investments in the Indian company, breaching the sectoral cap applicable.

### **8.B. IV Prior permission of the Reserve Bank in certain cases for acquisition / transfer of security**

- (i) Transfer of shares or convertible debentures from residents to non-residents by way of sale requires prior approval of Reserve Bank in case where the non-resident acquirer proposes deferment of payment of the amount of consideration. Further, in case approval is granted for the transaction, the same should be reported in Form FC-TRS to the AD Category – I bank, within 60 days from the date of receipt of the full and final amount of consideration.
- (ii) A person resident in India, who intends to transfer any security, by way of gift to a person resident outside India, has to obtain prior approval from the Reserve Bank<sup>10</sup>. While forwarding the application to the Reserve Bank for approval for transfer of shares by way of gift, the documents mentioned in Annex - 4 should be enclosed. The Reserve Bank considers the following factors while processing such applications:
  - a) The proposed transferee is eligible to hold such security under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
  - b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company / each series of debentures / each mutual fund scheme.

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<sup>10</sup> Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, 11<sup>th</sup> floor, Fort, Mumbai 400 001 along with the documents prescribed in Annex-4.





- c) The applicable sectoral cap limit in the Indian company is not breached.
  - d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time. The current list is reproduced in Annex - 5.
  - e) The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 per financial year.
  - f) Such other conditions as stipulated by the Reserve Bank in public interest from time to time.
- (iii) Transfer of shares from NRI to NR requires the prior approval of the Reserve Bank of India.

#### **8.B.V - Escrow account for transfer of shares**

AD Category – I banks have been given general permission to open and maintain non-interest bearing Escrow account in Indian Rupees in India on behalf of residents and non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions relating to transfer of shares. It has also been decided to permit SEBI authorised Depository Participant, to open and maintain, without approval of the Reserve Bank, Escrow account for securities as stated in para 9 (b).

**8.B.VI** The reporting guidelines are given in Section V of the Master Circular.

#### **8.C. Issue of Rights / Bonus shares**

An Indian company may issue Rights / Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, reporting requirements, etc. Further, such issue of bonus / rights shares have to be in accordance with other laws / statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements), Regulations 2009, etc.



- **Issue of Right shares to OCBs:** OCBs have been de-recognised as a class of investors with effect from September 16, 2003. Therefore, companies desiring to issue rights share to such erstwhile OCBs will have to take specific prior permission from the Reserve Bank<sup>11</sup>. As such, entitlement of rights share is not automatically available to OCBs. However, bonus shares can be issued to erstwhile OCBs without prior approval of the Reserve Bank, provided that the OCB is not in the adverse list of RBI.
- **Additional allocation of rights share by residents to non-residents :** Existing non-resident shareholders are allowed to apply for issue of additional shares / convertible debentures / preference shares over and above their rights share entitlements. The investee company can allot the additional rights shares out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

#### **8. D. Issue of shares under Employees Stock Option Scheme (ESOPs)**

An Indian Company may issue shares under ESOPs to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. Citizens of Bangladesh can invest with the prior approval of the FIPB. The face value of the shares to be allotted under the scheme to the non-resident employees should not exceed 5 per cent of the paid-up capital of the issuing company. Shares under ESOPs can be issued directly or through a Trust subject to the condition that the scheme has been drawn in terms of the relevant regulations issued by the SEBI.

#### **8. E. Conversion of ECB / Lumpsum Fee / Royalty / Import of capital goods by units in SEZs in to Equity/ Import payables / Pre incorporation expenses**

(i) Indian companies have been granted general permission for *conversion of External Commercial Borrowings (ECB) into shares / convertible debentures*, subject to the following conditions and reporting requirements:

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<sup>11</sup> Applications to be addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai



- a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government's approval for foreign equity in the company;
  - b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
  - c) Pricing of shares is determined as per SEBI regulations for listed company or DCF method for unlisted company;
  - d) Compliance with the requirements prescribed under any other statute and regulation in force;
  - e) The conversion facility is available for ECBs availed under the Automatic or Approval Route and is applicable to ECBs, due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators.
- (ii) General permission is also available *for issue of shares / preference shares against lump-sum technical know-how fee, royalty*, under automatic route or SIA / FIPB route, subject to pricing guidelines of RBI/SEBI and compliance with applicable tax laws.
- (iii) *Units in Special Economic Zones (SEZs) are permitted to issue equity shares to non-residents against import of capital goods* subject to the valuation done by a Committee consisting of Development Commissioner and the appropriate Customs officials.
- (iv) *Issue of equity shares against Import of capital goods / machinery / equipment (excluding second-hand machinery)* , is allowed under the Government route, subject to the compliance with the following conditions:
- a) The import of capital goods, machineries, etc., made by a resident in India, is in accordance with the Export / Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the Foreign Exchange Management Act (FEMA), 1999 relating to imports issued by the Reserve Bank;
  - (b) There is an independent valuation of the capital goods /machineries / equipments by a third party entity, preferably by an independent valuer from the country of import



along with production of copies of documents /certificates issued by the customs authorities towards assessment of the fair-value of such imports;

- (c) The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and
- (d) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
- (v) *Issue of equity shares against Pre-operative / pre – incorporation expenses* (including payment of rent etc.) is allowed under the Government route, subject to compliance with the following conditions :
  - a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
  - b) Verification and certification of the pre-incorporation / pre-operative expenses by the statutory auditor.
  - c) Payments being made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be allowed.
  - d) The applications, complete in all respects, for capitalisation being made within the period of 180 days from the date of incorporation of the company.

General conditions for issue of equity shares against Import of capital goods / machinery / equipment and Pre-operative / pre – incorporation expenses:

- (a) All requests for conversion should be accompanied by a special resolution of the company;
  - (b) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.
- (vi) Issue of shares to a non-resident against shares swap <sup>12</sup>i.e., in lieu for the consideration which has to be paid for shares acquired in the overseas company, can be done with the approval of FIPB.

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<sup>12</sup> Regulation issued under Notification no FEMA 120



(vii) The reporting guidelines are given in Section V of the Master Circular.

### **8.F. Issue of shares by Indian Companies under ADR / GDR**

Depository Receipts (DRs) are negotiable securities issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, London, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

- i) Indian companies can raise foreign currency resources abroad through the issue of ADRs/GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.
- ii) A company can issue ADRs / GDRs, if it is eligible to issue shares to person resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.
- iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier.

ADRs / GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilisation of the proceeds, the Indian company can invest the funds in:-

- a. Deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch or Moody's, etc. and such rating not



being less than the rating stipulated by the Reserve Bank from time to time for the purpose;

- b. Deposits with branch/es of Indian Authorised Dealers outside India; and
- c. Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less.

- v) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.
- vi) The ADR / GDR proceeds can be utilised for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.
- vii) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank<sup>13</sup> from time to time, as applicable to all shareholders exercising voting rights.
- viii) Erstwhile OCBs which are not eligible to invest in India and entities prohibited to buy / sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
- ix) The pricing of ADR / GDR issues including sponsored ADRs / GDRs should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.
- x) A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. Re-issuance of

<sup>13</sup> As per [DBOD Circular No. DBOD.No.PSBD.7269/16.13.100/2006-07 dated February 5,2007](#) bank raising fund through ADR / GDR mechanism, should give an undertaking to the Reserve Bank that they would not take cognizance to voting by the depository, should the depository vote in contravention of its agreement with the bank.



ADRs / GDRs would be permitted to the extent of ADRs / GDRs which have been redeemed into underlying shares and sold in the Indian market.

**xi) Sponsored ADR/GDR issue**

An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue is remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADRs / GDRs.

**xii) The reporting guidelines for ADR /GDR are given in Section V of the Master Circular.**

**8G. FDI – through issue / transfer of ‘participating interest / right’ in oil fields to a non resident**

Foreign investment by way of issue / transfer of ‘participating interest/right’ in oil fields by Indian companies to a non resident is treated as an FDI under the extant FDI policy and the FEMA regulations. Accordingly, these transactions have to be reported as FDI transactions. Transfer of ‘participating interest/ rights’ will be reported as ‘other’ category under Para 7 of revised Form FC-TRS and issuance of ‘participating interest/ rights’ will be reported as ‘other’ category of instruments under Para 4 of Form FC-GPR

**9. Foreign Currency Account and Escrow Account**

a) Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a Foreign Currency Account for bonafide business purpose only with the prior approval of the Reserve Bank.



b) AD Category – I banks have been given general permission to open and maintain non-interest bearing Escrow account in Indian Rupees in India on behalf of residents and non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions. It has also been decided to permit SEBI authorised Depository Participant, to open and maintain, without approval of the Reserve Bank, Escrow account for securities. The Escrow account would also be subject to the terms and conditions as stipulated in [A.P. \(DIR Series\) Circular No. 58 dated May 2, 2011](#). Further, the Escrow account would be maintained with AD Category I bank or SEBI Authorised Depository Participant (in case of securities account). These facilities will be applicable to both, issue of fresh shares to the non-residents as well as transfer of shares to the non-residents as well as transfer of shares from / to the non-residents.

#### **10. Acquisition of shares under Scheme of Merger / Amalgamation**

Mergers and amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/amalgamation. Once the scheme of merger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that :

- (i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and
- (ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy (refer para 7(c) ).

#### **11. Remittance of sale proceeds**

AD Category – I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with





the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

## **12. Remittance on winding up/liquidation of Companies**

AD Category – I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, 1956. AD Category – I banks shall allow the remittance provided the applicant submits:

- i. No objection or Tax clearance certificate from Income Tax Department for the remittance.
- ii. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- iii. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.
- iv. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

## **13. Pledge of Shares**

- a) A person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowings, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer. The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that :



- i). the loan agreement has been signed by both the lender and the borrower,
  - ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and
  - iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank: and the said pledge would be subject to the following conditions :
    - i). the period of such pledge shall be co-terminus with the maturity of the underlying ECB;
    - ii). in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;
    - iii). the Statutory Auditor has certified that the borrowing company will utilized / has utilized the proceeds of the ECB for the permitted end use/s only.
- b) Non-resident holding shares of an Indian company, can pledge these shares in favour of the AD bank in India to secure credit facilities being extended to the resident investee company for bonafide business purpose, subject to the following conditions:**
- i. in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;
  - ii. submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;
  - iii. the Indian company has to follow the relevant SEBI disclosure norms; and
  - iv. pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.
- c) Non-resident holding shares of an Indian company, can pledge these shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-resident promoter of the Indian company or its overseas group company, subject to the following :**
- I. loan is availed of only from an overseas bank;
  - II. loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;
  - III. overseas investment should not result in any capital inflow into India;



- IV. in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and
- V. submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

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## **Section - II: Foreign investments under Portfolio Investment Scheme (PIS)**

### **1. Entities**

- (i) Foreign Institutional Investors (FIIs) registered with SEBI are eligible to purchase shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme (PIS).
- (iii) NRIs are eligible to purchase shares and convertible debentures issued by Indian companies under PIS, if they have been permitted by the designated branch of any AD Category - I bank (which has been authorised by the Reserve Bank to administer the PIS).
- (iii) SEBI approved sub accounts of FIIs (sub accounts) have general permission to invest under the PIS.
- (iv) OCBs are not permitted to invest under the PIS with effect from November 29, 2001, in India. Further, the OCBs which have already made investments under the PIS are allowed to continue holding such shares / convertible debentures till such time these are sold on the stock exchange.

### **2. Investment in listed Indian companies**

#### **A. FIIs**

- (a) **An Individual FII/ SEBI approved sub accounts** of FIIs can invest up to a maximum of 10 per cent of the total paid-up capital or 10 per cent of the paid-up value of each series of convertible debentures issued by the Indian company. The 10 per cent limit would include shares held by SEBI registered FII/ SEBI approved sub accounts of FII under the PIS (by way of purchases made through a registered broker on a recognized stock exchange in India or by way of offer/private placement) as well as shares acquired by SEBI registered FII under the FDI scheme.
- (b) **Total holdings of all FIIs / SEBI approved sub accounts of FIIs** put together shall not exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. This limit of 24 per cent can be increased to the sectoral cap / statutory limit, as applicable to the Indian company concerned, by passing a



resolution of its Board of Directors followed by a special resolution to that effect by its General Body and subject to intimation to the Reserve Bank.

## **B. NRIs**

- (a) NRIs are allowed to invest in shares of listed Indian companies in recognised Stock Exchanges under the PIS.
- (b) NRIs can invest through designated ADs, on repatriation and non-repatriation basis under PIS route up to 5 per cent of the paid-up capital / paid-up value of each series of debentures of listed Indian companies.
- (c) The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body and subject to intimation to the Reserve Bank.

## **C. Prohibition on investments by FIIs and NRIs**

- FIIs are not permitted to invest in the capital of an Asset Reconstruction Company.
- **Both FIIs and NRIs** are not allowed to invest in any company which is engaged or proposes to engage in the following activities:
  - i) Business of chit fund, or
  - ii) Nidhi company, or
  - iii) Agricultural or plantation activities, or
  - iv) Real estate business\* or construction of farm houses, or
  - v) Trading in Transferable Development Rights (TDRs).

\* Real estate business" does not include construction of housing / commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, townships



### 3. Accounts with AD Category – I banks

#### A. FIIs

FIIs/sub-accounts can open a non-interest bearing Foreign Currency Account and / or a **single non-interest bearing** Special Non-Resident Rupee Account(SNRR A/c) with an AD Category – I bank, for the purpose of investment under the PIS. They can transfer sums from the Foreign Currency Account to the **single** SNRR A/c for making genuine investments in securities in terms of the SEBI (FII) Regulations,1995 , as amended from time to time. The sums may be transferred from Foreign Currency Account to SNRR A/c at the prevailing market rate and the AD Category - I bank may transfer repatriable proceeds (after payment of tax) from the SNRR A/c to the Foreign Currency account. The SNRR A/c may be credited with the sale proceeds of shares / debentures, dated Government securities, Treasury Bills, etc. Such credits are allowed, subject to the condition that the AD Category - I bank should obtain confirmation from the investee company / FII concerned that tax at source, wherever necessary, has been deducted from the gross amount of dividend / interest payable / approved income to the share / debenture / Government securities holder at the applicable rate, in accordance with the Income Tax Act. The SNRR A/c may be debited for purchase of shares / debentures, dated Government securities, Treasury Bills, etc., and for payment of fees to applicant FIIs' local Chartered Accountant / Tax Consultant where such fees constitute an integral part of their investment process.

#### B. NRIs

**NRIs** can approach the designated branch of any AD Category - I bank (which has been authorised by the Reserve Bank to administer the PIS) for permission to open a single designated account (NRE/NRO account) under the PIS for routing investments.

Payment for purchase of shares and/or debentures on **repatriation basis** has to be made by way of inward remittance of foreign exchange through normal banking channels or out of funds held in NRE/FCNR(B) account maintained in India. If the shares are purchased on **non-repatriation basis**, the NRIs can also utilise their funds in NRO account in addition to the above.



## 4. Exchange Traded Derivative Contracts

### A. FIIs

- SEBI registered FIIs are allowed to trade in all exchange traded derivative contracts<sup>14</sup> approved by RBI/SEBI on recognised Stock Exchanges in India subject to the position limits and margin requirements as prescribed by RBI / SEBI from time to time as well as the stipulations regarding collateral securities as directed by the Reserve Bank from time to time.
- The SEBI registered FII / sub-account may open a separate account under their SNRR A/c through which all receipts and payments pertaining to trading / investment in exchange traded derivative contracts will be made (including initial margin and mark to market settlement, transaction charges, brokerage, etc.).
- Further, transfer of funds between the SNRR A/c and the separate account maintained for the purpose of trading in exchange traded derivative contracts can be freely made.
- However, repatriation of the Rupee amount will be made only through their SNRR A/c subject to payment of relevant taxes. The AD Category – I banks have to keep proper records of the above mentioned separate account and submit them to the Reserve Bank as and when required.

### B. NRIS

NRIs are allowed to invest in Exchange Traded Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India on non-repatriation basis, subject to the limits prescribed by SEBI. Such investments will not be eligible for repatriation benefits.

## 5. Collateral for FIIs

- a) **Derivative Segment:** FIIs are allowed to offer foreign sovereign securities with AAA rating as collateral to the recognised Stock Exchanges in India in addition to the cash for their transactions in derivatives segment of the market. SEBI approved clearing corporations of stock exchanges and their clearing members are allowed to undertake

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<sup>14</sup> As per Notification no FMD.MSRG.No.39/02.04.003/2009-10 dated August 28,2008 FIIs registered with SEBI may purchase / sell Interest Rate Futures subject to the condition that total gross long position does not exceed their individual permissible limit for investment in government securities and the total gross short position, for the purpose of hedging only, does not exceed their long position in the government securities and in the Interest Rate Futures at any point of time.



the following transactions subject to the guidelines issued from time to time by SEBI in this regard:

- a. to open and maintain demat accounts with foreign depositories and to acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIs;
- b. to remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and
- c. to liquidate such foreign sovereign securities, if the need arises.

Clearing Corporations have to report, on a monthly basis, the balances of foreign sovereign securities, held by them as non-cash collaterals of their clearing members to the Reserve Bank<sup>15</sup>. The report should be submitted by the 10<sup>th</sup> of the following month to which it relates.

**b) Equity Segment:**

**The above guidelines are also applicable to the equity segment.** Further, Domestic Government Securities (subject to the overall limits specified by the SEBI from time to time; the current limit being USD 20 billion) also can be kept as collateral to the recognised Stock Exchanges in India in addition to the cash and foreign sovereign securities with AAA rating for their transactions in cash segment of the market. However, cross-margining of Government Securities (placed as margins by the FIIs for their transactions in the cash segment of the market) shall not be allowed between the cash and the derivative segments of the market.

Custodian banks are allowed to issue Irrevocable Payment Commitments (IPCs) in favour of Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the PIS. Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time and instructions issued vide DBOD [Circular no. DBOD.Dir.BC. 46/13.03.00/2010-11 dated September 30, 2010](#).

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<sup>15</sup> Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai.





## **6. Short Selling by FIIs**

### **A. FIIs**

FIIs registered with SEBI and SEBI approved sub-accounts of FIIs are permitted to short sell, lend and borrow equity shares of Indian companies. Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed by the Reserve Bank and the SEBI / other regulatory agencies from time to time. The permission is subject to the following conditions:

- a) Short selling of equity shares by FIIs shall not be permitted for equity shares of Indian companies which are in the ban list and / or caution list of the Reserve Bank.
- b) Borrowing of equity shares by FIIs shall only be for the purpose of delivery into short sales.
- c) The margin / collateral shall be maintained by FIIs only in the form of cash. No interest shall be paid to the FII on such margin/collateral.

### **B. NRIs**

The NRI investor has to take delivery of the shares purchased and give delivery of shares sold. Short Selling is not permitted.

## **7. Private placement with FIIs**

SEBI registered FIIs have been permitted to purchase shares / convertible debentures of an Indian company through offer/private placement, subject to total FII investment viz. PIS & FDI (private placement / offer) being within the individual FII/sub account investment limit 10 per cent and all FIIs/sub-accounts put together - 24 per cent of the paid-up capital of the Indian company or to the sectoral limits, as applicable. Indian company is permitted to issue such shares provided that:

- a) in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents; and
- b) in the case of issue by private placement, the issue price should be determined as per the pricing guidelines stipulated under the FDI scheme.



## **8. Transfer of shares acquired under PIS under private arrangement**

Shares purchased by NRIs and FIIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without prior approval of the Reserve Bank. However, NRIs can transfer shares acquired under PIS to their relatives as defined in Section 6 of Companies Act, 1956 or to a charitable trust duly registered under the laws in India.

## **9. Monitoring of investment position by RBI and AD banks**

The Reserve Bank monitors the investment position of FIIs/NRIs in listed Indian companies, reported by Custodian/designated AD banks, on a daily basis, in Forms LEC (FII) and LEC (NRI). However, the respective designated bank (NRIs) / Custodian bank (FIIs) should monitor:

- the individual limit of NRI / FII to ensure that it does not breach the prescribed limits.
- that the trades are not undertaken in the prohibited sectors when the same is reported to them.
- that all trades are reported to them by monitoring the transactions in the designated account.

The onus of reporting of FII and NRI transactions lies on the designated custodian/AD bank, depository participant as well as the FII/NRI making these investments.

## **10. Prior intimation to Reserve Bank of India**

Indian company raising the aggregate FII investment limit of 24 per cent to the sectoral cap/statutory limit, as applicable to the respective Indian company or raising the aggregate NRI investment limit of 10 per cent to 24 per cent, should necessarily intimate the same to the Reserve Bank of India, immediately, as hitherto, along with a Certificate from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Policy, as amended from time to time, have been complied with.



## **11. Caution List**

When the aggregate net purchases of equity shares of the Indian company by FIIs/NRIs/PIOs reaches the cut-off point of 2 per cent below the overall limit, the Reserve Bank cautions all the designated bank branches not to purchase any more equity shares of the respective company on behalf of any FIIs/ NRIs/ PIOs without prior approval of the Reserve Bank. The link offices are then required to intimate the Reserve Bank about the total number and value of equity shares/ convertible debentures of the company proposed to be bought on behalf of their FIIs /NRIs /PIOs clients. On receipt of such proposals, the Reserve Bank gives clearances on a first-come-first serve basis till such investments in companies reaches the respective limits (such as 10 / 24 / 30 / 40/ 49 per cent limit or the sectoral caps/statutory ceilings), as applicable.

## **12. Ban List**

Once the shareholding by FIIs/NRIs/PIO reaches the overall ceiling / sectoral cap / statutory limit, the Reserve Bank places the company in the Ban List and advises all designated bank branches to stop purchases on behalf of their FIIs/ NRIs/ PIO clients. Once a company is placed in the Ban List, no FII / NRI can purchase the shares of the company under the PIS.

The Reserve Bank also informs the general public about the `caution' and the `stop purchase' in the companies through a press release and an updated list regarding the same is placed on the RBI website

## **13. Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of FIIs**

To facilitate the settlement process of the FIIs trades under the portfolio route, custodian banks were permitted to issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the Portfolio Investment Scheme (PIS).

## **14. Investment by Qualified Foreign Investors (QFIs) in listed equity shares**

Qualified Foreign Investors, who meet the following definition are allowed to make investments in all eligible securities for QFIs:



**(i) Definition** - QFIs shall mean a person who fulfills the following criteria :

(a) Resident in a country that is a member of Financial Action task Force (FATF) or a member of a group which is a member of FATF; and

(b) Resident in a country that is a signatory to IOSCO's MMoU (Appendix A Signatories) or a signatory of a bilateral MoU with SEBI

PROVIDED that the person is not resident in a country listed in the public statements issued by FATF from time to time on jurisdictions having a strategic AML/CFT deficiencies to which counter measures apply or that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies;

PROVIDED that such person is not resident in India;

PROVIDED FURTHER that such person is not registered with SEBI as a Foreign Institutional Investor (FII) or Sub-Account of an FII or Foreign Venture Capital Investor (FVCI).

Explanation – For the purposes of this clause:

(1) “bilateral MoU with SEBI” shall mean a bilateral MoU between SEBI and the overseas regulator that, inter alia, provides for information sharing arrangements.

(2) Member of FATF shall not mean an associate member of FATF.

**ii) Eligible instruments and eligible transactions** – QFIs shall be permitted to invest through SEBI registered Qualified Depository Participants (QDPs defined as per the extant SEBI regulations) only in equity shares of listed Indian companies through registered brokers on recognized stock exchanges in India as well as in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations. QFIs shall also be permitted to acquire equity shares by way of rights shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the investment limits as prescribed in para. (v) below.



QFIs shall be allowed to sell the equity shares so acquired by way of sale

- (a) Through recognized brokers on recognized stock exchanges in India; or
- (b) In an open offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or
- (c) In an open offer in accordance with the SEBI (Delisting of Securities) Guidelines, 2009; or
- (d) Through buyback of shares by a listed Indian company in accordance with the SEBI (Buyback) Regulations, 1998.

(iii) **Mode of payment / repatriation** – For QFI investments in eligible securities, a single non- interest bearing Rupee Account would be maintained with an AD Category- I bank in India. The account shall be funded by inward remittance through normal banking channel and by credit of the sale/redemption/buyback proceeds (net of taxes) and on account of interest payment / dividend on the eligible securities for QFIs. The funds in this account shall be utilized for purchase of eligible securities for QFIs or for remittance (net of taxes) outside India. The single non- interest bearing Rupee Account would be operated by QDP on behalf of QFI.

(iv) **Demat accounts** - QFIs would be allowed to open a dedicated demat account with a QDP in India for investment in equity shares under the scheme. Each QFI shall maintain a single demat account with a QDP for all investments in eligible securities for QFIs in India.

(v) **Limits** - The individual and aggregate investment limits for investment by QFIs in equity shares of listed Indian companies shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme for foreign investment in India. Further, wherever there are composite sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps. The onus of monitoring and compliance of these limits shall remain jointly and severally with the respective QFIs, QDPs and the respective Indian companies (receiving such investment).



(vi) **KYC** - QDPs will ensure KYC of the QFIs as per the norms prescribed by SEBI. AD Category-I banks will also ensure KYC of the QFIs for opening and maintenance of the single non- interest bearing Rupee accounts as per the extant norms.

(vii) **Permissible currencies** - QFIs will remit foreign inward remittance through normal banking channel in any permitted currency (freely convertible) directly into single non- interest bearing Rupee Account of the QDP maintained with AD Category-I bank.

(viii) **Pricing** – The pricing of all eligible transactions and investment in all eligible instruments by QFIs shall be in accordance with the relevant and applicable SEBI guidelines only.

(ix) **Reporting** – In addition to the reporting to SEBI as may be prescribed by them, QDPs and AD Category-I banks (maintaining QFI accounts) will also ensure reporting to the Reserve Bank of India in a manner and format as prescribed by the Reserve Bank of India from time to time.

(x) **Hedging** – QFIs would be permitted to hedge their currency risk on account of their permissible investments (in equity and debt instruments) in terms of the guidelines issued by the Reserve Bank from time to time.



## Section - III: Foreign Venture Capital Investments

### Investments by Foreign Venture Capital Investor

- (i) A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from the Reserve Bank can invest in Indian Venture Capital Undertaking (IVCU) or Venture Capital Fund (VCF) or in a scheme floated by such VCFs subject to the condition that the domestic VCF is registered with SEBI. These investments by SEBI registered FVCI, would be subject to the respective SEBI regulations and FEMA regulations and sector specific caps of FDI.
- (ii) *An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI. A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.*
- (iii) FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF or in units of schemes / funds set up by a VCF through initial public offer or private placement or by way of private arrangement or purchase from third party. Further, FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time.
- (iv) At the time of granting approval, the Reserve Bank permits the FVCI to open a non-interest bearing Foreign Currency Account and/or a non-interest bearing Special Non-Resident Rupee Account with a designated branch of an AD Category – I bank, subject to certain terms and conditions.
- (iv) A SEBI registered FVCI can acquire / sale securities (as given in (iii) above) by way of public offer or private placement by the issuer of such securities and /or by way of



private arrangement with a third party at a price that is mutually acceptable to the buyer and the seller.

- (vi) AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.
- (vii) The investments made by FVCI under Schedule I of Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time, would be governed by the norms as stated therein.





## Section - IV: Other Foreign Investments

### 1. Purchase of other securities by NRIs

#### (i) On non-repatriation basis

- (a) NRIs can purchase shares / convertible debentures issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR(B) / NRO account maintained with the AD Category - I bank.
- (b) NRIs can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

*NRI can also invest in non-convertible debentures issued by an Indian Company, both on repatriation basis and on non-repatriation basis, subject to the other terms and conditions stated under [Notification No FEMA 4/2000-RB dated May 3,2000](#) (as amended from time to time).*

#### (ii) On repatriation basis

An NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.



## 2. Indian Depository Receipts (IDR)

Indian Depository Receipts (IDRs) can be issued by non resident companies in India subject to and under the terms and conditions of Companies (Issue of Depository Receipts) Rules, 2004 and subsequent amendment made thereto and the SEBI (ICDR) Regulations, 2000, as amended from time to time. These IDRs can be issued in India through Domestic Depository to residents in India as well as SEBI registered FIIs and NRIs. In case of raising of funds through issuances of IDRs by financial / banking companies having presence in India, either through a branch or subsidiary, the approval of the sectoral regulator(s) should be obtained before the issuance of IDRs.

- a) The FEMA Regulations shall not be applicable to persons resident in India as defined under Section 2(v) of FEMA, 1999, for investing in IDRs and subsequent transfer arising out of transaction on a recognized stock exchange in India.
- b) Foreign Institutional Investors (FIIs) including SEBI approved sub-accounts of the FIIs, registered with SEBI and Non-Resident Indians (NRIs) may invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time. Further, NRIs are allowed to invest in the IDRs out of funds held in their NRE / FCNR(B) account, maintained with an Authorised Dealer / Authorised bank.
- c) <sup>16</sup>A limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) has been introduced which would be subject to the certain terms and conditions. Further, the issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.
- d) IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.
- e) At the time of redemption / conversion of IDRs into underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign

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<sup>16</sup> Updated in terms of [A.P.\(DIR Series\) Circular No. 19 dated August 28, 2012](#)



Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide [Notification No. FEMA 120 / RB-2004 dated July 7 2004](#), as amended from time to time. Accordingly, the following guidelines shall be followed, on redemption of IDRs:

- i. Listed Indian companies may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulations 6B and 7 of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.
  - ii. Indian Mutual Funds, registered with SEBI may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulation 6C of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.
  - iii. Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.
  - iv. The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs.
- f) The proceeds of the issue of IDRs shall be immediately repatriated outside India by the eligible companies issuing such IDRs. The IDRs issued should be denominated in Indian Rupees.

### **3. Purchase of other securities by FIIs, QFIs and Long Term Investors**

FIIs, QFIs and Long Term Investors can buy on repatriation basis dated Government securities / treasury bills, listed non-convertible debentures / bonds , commercial papers issued by Indian companies and units of domestic mutual funds, to be listed NCDs/ bonds only if listing of such NCDs/bonds is committed to be done within 15 days of such investment, Security receipts issued by Asset Reconstruction Companies and Perpetual Debt Instruments eligible for inclusion in as Tier I capital (as defined by DBOD, RBI) and Debt capital instruments as upper Tier II Capital (as defined by DBOD, RBI) issued by banks in India to augment their capital either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India subject to the following terms and conditions:



- a) The total holding by a single FII in each tranche of scheme of Security Receipts shall not exceed 10% of the issue and total holdings of all FIIs put together shall not exceed 49% of the paid up value of each tranche of scheme / issue of Security Receipts issued by the ARCs. Further, Sub –account of FIIs are not allowed to invest in the Security Receipts issued by ARCs
- b) The total holding by a single FII / sub-account in each issue of Perpetual Debt Instruments (Tier I) shall not exceed 10% of the issue and total holdings of all FIIs / sub-account put together shall not exceed 49% of the paid up value of each issue of Perpetual Debt Instruments.
- c) Purchase of debt instruments including Upper Tier II instruments by FIIs are subject to limits notified by SEBI and the Reserve Bank from time to time.

The present limit for investment in Corporate Debt Instruments like non-convertible debentures / bonds by FIIs, QFIs and Long Term Investors registered with SEBI comprising Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds and Foreign Central Banks is USD 51 billion<sup>17</sup>. The eligible investors may invest in Commercial Paper upto a limit of USD 3.50 billion within the overall limit of USD 51 billion.

The present limit of investment by SEBI registered FIIs, QFIs, and Long term investors registered with SEBI comprising Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds and Foreign Central Banks in Government Securities including Treasury Bills is USD 25 billion. Eligible investors may invest in Treasury Bills only upto a limit of USD 5.50 billion within the overall limit of USD 25 billion.

#### **4. Investment by Multilateral Development Banks (MDBs)**

A Multilateral Development Bank (MDB) which is specifically permitted by the Government of India to float rupee bonds in India can purchase Government dated securities.

#### **5. Foreign Investment in Tier I and Tier II instruments issued by banks in India**

- (i) FIIs registered with SEBI and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions:



- a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII should not exceed the limit of 10 per cent of each issue.
  - b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of each issue.
  - c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.
  - d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.
- (ii) The issuing banks are required to ensure compliance with the conditions stipulated above at the time of issue. They are also required to comply with the guidelines issued by the Department of Banking Operations and Development (DBOD), Reserve Bank of India, from time to time.
- (iii) The issue-wise details of the amount raised as Perpetual Debt Instruments qualifying for Tier I capital by the bank from FIIs / NRIs are required to be reported in the prescribed format within 30 days of the issue to the Reserve Bank<sup>17</sup>.
- (iv) Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by SEBI for investment in corporate debt instruments. However, investment by FIIs in these instruments will be subject to a separate ceiling of USD 500 million.
- (v) The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

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<sup>17</sup> Addressed to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.



## **6. Qualified Foreign Investors (QFIs) investment in the units of Domestic Mutual funds**

Non- resident investors (other than SEBI registered FIIs/FVCIs) who meet the KYC requirements of SEBI, were permitted to purchase on repatriation basis rupee denominated units of equity schemes of SEBI registered domestic MFs as Qualified Foreign Investors' (QFIs), in accordance with the terms and conditions as stipulated by the SEBI and the RBI from time to time in this regard.

QFIs may invest in rupee denominated units of equity schemes of SEBI registered domestic MFs under the two routes, namely:

- (i) Direct Route – SEBI registered Qualified Depository Participant (QDP) route -
  - o The QDP route will be operated through single non-interest bearing Rupee account to be maintained with an AD Category I Bank in India. The foreign inward remittances in to the single non-interest bearing Rupee account shall be received only in permissible currency.
- (ii) Indirect Route - Unit Confirmation Receipt (UCR) route - Domestic MFs would be allowed to open foreign currency accounts outside India for the limited purpose of receiving subscriptions from the QFIs as well as for redeeming the UCRs. The UCR will be issued against units of domestic MF equity schemes.
- (iii) Investments by the QFIs under both the routes would be subject to a ceiling of USD 10 billion for investment in units of equity based domestic MF and USD 3 billion for investment in units of debt based domestic MF. QFIs can also invest in those MF schemes that hold at least 25 per cent of their assets (either in debt or equity or both) in the infrastructure sector under the USD 3 billion sub-limit for investment in mutual funds related to infrastructure.

## **7. Infrastructure Debt Funds (IDF)**

In order to accelerate and enhance the flow of long term funds to infrastructure projects for undertaking the Government's ambitious programme of infrastructure development, Union Finance Minister in his budget speech for 2011-12 had announced setting up of Infrastructure



Debt Funds (IDFs). Government vide press release dated June 24, 2011 notified the broad structure of the proposed IDFs. The summarized position is given as under:

- (i) SWFs, Multilateral Agencies, Pension Funds, Insurance Funds and Endowment Funds - registered with SEBI, FIIs, NRIs would be the eligible class non- resident investors which will be investing in IDFs
- (ii) Eligible non-resident investors are allowed to invest on repatriation basis in (i) Rupee and Foreign currency denominated bonds issued by the IDFs set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank of India and in (ii) Rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds (MFs), in accordance with the terms and conditions stipulated by the SEBI and the Reserve Bank of India from time to time.
- (iii) The eligible instruments are Foreign Currency & Rupee denominated Bonds and Rupee denominated Units;
- (iv) The facility of Foreign exchange hedging would be available to non-resident IDF investors, IDFs as well as infrastructure project companies exposed to the foreign exchange/ currency risk.

## **8. Purchase of other securities by QFIs**

QFIs can invest through SEBI registered Qualified Depository Participants (QDPs) (defined as per the extant SEBI regulations) in eligible corporate debt instruments, viz. listed Non-Convertible Debentures (NCDs), listed bonds of Indian companies, listed units of Mutual Fund debt Schemes and “to be listed” corporate bonds (hereinafter referred to as ‘eligible debt securities’) directly from the issuer or through a registered stock broker on a recognized stock exchange in India. However, in case of non-listing of “to be listed” corporate bonds, the provisions relating to FIIs would be applicable. Further, QFIs shall also be permitted to sell ‘eligible debt securities’ so acquired by way of sale through registered stock broker on a recognized stock exchange in India or by way of buyback or redemption by the issuer.



~~QFIs are permitted to invest in corporate debt securities (without any lock-in or residual maturity clause) and Mutual Fund debt schemes subject to a total overall ceiling of USD 1 billion. This limit shall be over and above USD 20 billion for FII investment in corporate debt.~~

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## **Section - V: Reporting guidelines for Foreign Investments in India as per Section I and II**

### **1. Reporting of FDI<sup>18</sup> for fresh issuance of shares**

#### **(i) Reporting of inflow**

- (a) The actual inflows on account of such issuance of shares shall be reported by the AD branch in the R-returns in the normal course.
- (b) An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank through it's AD Category I bank, not later than 30 days from the date of receipt in the Advance Reporting Form enclosed in Annex - 6. Non-compliance with the above provision would be reckoned as a contravention under FEMA, 1999 and could attract penal provisions.

The Form can also be downloaded from the Reserve Bank's website

[http://www.rbi.org.in/Scripts/BS\\_ViewFemaForms.aspx](http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx).

- (c) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category - I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as Annex – 7) on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

#### **(ii) Time frame within which shares have to be issued**

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<sup>18</sup> Part B of form FC-GPR has been discontinued and replaced by an Annual return for Foreign Assets and Liabilities which is available at [http://rbidocs.rbi.org.in/rdocs/content/pdfs/APFL200612\\_F.pdf](http://rbidocs.rbi.org.in/rdocs/content/pdfs/APFL200612_F.pdf)





The equity instruments should be issued within 180 days from the date of receipt of the inward remittance or by debit to the NRE/FCNR (B) /Escrow account of the non-resident investor. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B)/Escrow account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions. In exceptional cases, refund / allotment of shares for the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank, on the merits of the case.

### **(iii) Reporting of issue of shares**

- (a) After issue of shares (including bonus and shares issued on rights basis and shares issued on conversion of stock option under ESOP scheme)/ convertible debentures / convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in Annex - 8, through its AD Category I bank, not later than 30 days from the date of issue of shares. The Form can also be downloaded from the Reserve Bank's website [http://www.rbi.org.in/Scripts/BS\\_ViewFemaForms.aspx](http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx). Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.
- (b) Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorised Dealer of the company, who will forward it to the concerned Regional Office of the Reserve Bank. The following documents have to be submitted along with Form FC-GPR:
  - (i) A certificate from the Company Secretary of the company certifying that :
    - a) all the requirements of the Companies Act, 1956 have been complied with;
    - b) terms and conditions of the Government's approval, if any, have been complied with;
    - c) the company is eligible to issue shares under these Regulations; and



- d) the company has all original certificates issued by AD banks in India evidencing receipt of amount of consideration.
- (ii) A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.
- (d) Issue of bonus/rights shares or shares on conversion of stock options issued under ESOP to persons resident outside India directly or on amalgamation / merger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty / lumpsum technical know-how fee / import of capital goods by units in SEZs has to be reported in Form FC-GPR.

## **2. Reporting of FDI for Transfer of shares route**

- (i) The actual inflows and outflows on account of such transfer of shares shall be reported by the AD branch in the R-returns in the normal course.
- (ii) Reporting of transfer of shares between residents and non-residents and vice- versa is to be made in Form FC-TRS (enclosed in Annex – 9-i). The Form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India.
- (iii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a KYC check (Annex 9-ii) by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category - I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC-TRS.



- (iv) The AD bank should scrutinise the transactions and on being satisfied about the transactions should certify the form FC-TRS as being in order.
- (v) The AD bank branch should submit two copies of the Form FC-TRS received from their constituents/customers together with the statement of inflows/outflows on account of remittances received/made in connection with transfer of shares, by way of sale, to IBD/FED/or the nodal office designated for the purpose by the bank in the enclosed proforma (which is to be prepared in MS-Excel format). The IBD/FED or the nodal office of the bank will consolidate reporting in respect of all the transactions reported by their branches into two statements inflow and outflow statement. These statements (inflow and outflow) should be forwarded on a monthly basis to Foreign Exchange Department, Reserve Bank, Foreign Investment Division, Central Office, Mumbai in soft copy (in MS-Excel) by [e-mail](#). The bank should maintain the FC-TRS forms with it and should not forward the same to the Reserve Bank of India.
- (vi) The transferee/his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the Form FC-TRS from the AD branch that the remittances have been received by the transferor/payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.
- (v) On receipt of statements from the AD bank, the Reserve Bank may call for such additional details or give such directions as required from the transferor/transferee or their agents, if need be.

### 3. Reporting of conversion of ECB into equity

Details of issue of shares against conversion of ECB has to be reported to the Regional Office concerned of the Reserve Bank, as indicated below:

- a. In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the



Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.

- b. In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.
- c. The SEZ unit issuing equity as mentioned in para (iii) above, should report the particulars of the shares issued in the Form FC-GPR.

#### **4. Reporting of ESOPs for allotment of equity shares**

The issuing company is required to report the details of issuance of ESOPs to its employees to the Regional Office concerned of the Reserve Bank, in plain paper reporting, within 30 days from the date of issue of ESOPs. Further, at the time of conversion of options into shares the Indian company has to ensure reporting to the Regional Office concerned of the Reserve Bank in form FC-GPR, within 30 days of allotment of such shares.

#### **5. Reporting of ADR/GDR Issues**

The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the Form enclosed in Annex -10, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the Form enclosed in Annex - 11, to the Reserve Bank within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per the extant Reserve Bank guidelines.

#### **6. Reporting of FII investments under PIS scheme**

- (i) **FII reporting:** The AD Category – I banks have to ensure that the FIIs registered with SEBI who are purchasing various securities (except derivative and IDRs) by debit to the



Special Non-Resident Rupee Account should report all such transactions details (except derivative and IDRs) in the Form LEC (FII) to Foreign Exchange Department, Reserve Bank of India, Central Office by uploading the same to the ORFS web site (<https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp>). It would be the banks responsibility to ensure that the data submitted to RBI is reconciled by periodically taking a FII holding report for their bank.

(iii) The Indian company which has issued shares to FIIs under the FDI Scheme (for which the payment has been received directly into company's account) and the Portfolio Investment Scheme (for which the payment has been received from FIIs' account maintained with an AD Category – I bank in India) should report these figures separately under item no. 5 of Form FC-GPR (Annex - 8) (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical / monitoring purposes.

#### **7. Reporting of NRI investments under PIS scheme**

The link office of the designated branch of an AD Category – I bank shall furnish to the Reserve Bank<sup>19</sup>, a report on a daily basis on PIS transactions undertaken by it, on behalf of NRIs. This report can be furnished on a floppy to the Reserve Bank and also uploaded directly on the OFRS web site (<https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp>). It would be the banks responsibility to ensure that the data submitted to RBI is reconciled by periodically taking a NRI holding report for their bank.

#### **8. Reporting of foreign investment by way of issue / transfer of 'participating interest/right' in oil fields**

Foreign investment by way of issue / transfer of 'participating interest/right' in oil fields by Indian companies to a non resident would be treated as an FDI transaction under the extant FDI policy and the FEMA regulations. Accordingly, transfer of 'participating interest/ rights' will be reported as 'other' category under Para 7 of revised Form FC-TRS as given in the Annex-8 and issuance of 'participating interest/ rights' will be reported as 'other' category of instruments under Para 4 of Form FC-GPR as given in the Annex-9.

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<sup>19</sup> Addressed to the Chief General Manager- in-Charge, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.



## Part II

### Investment in Partnership Firm / Proprietary Concern

#### 1. Investment in Partnership Firm / Proprietary Concern

A Non-Resident Indian<sup>20</sup> (NRI) or a Person of Indian Origin<sup>21</sup> (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided:

- i. Amount is invested by inward remittance or out of NRE / FCNR(B) / NRO account maintained with Authorised Dealers / Authorised banks.
- ii. The firm or proprietary concern is not engaged in any agricultural / plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.
- iii. Amount invested shall not be eligible for repatriation outside India.

#### 2. Investments with repatriation benefits

NRIs / PIO may seek prior permission of Reserve Bank<sup>22</sup> for investment in sole proprietorship concerns / partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.

#### 3. Investment by non-residents other than NRIs / PIO

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<sup>20</sup> 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;

<sup>21</sup> 'Person of Indian Origin' means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if

- a) he at any time held Indian passport; or
- b) he or either of his parents or any of his grand - parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

<sup>22</sup> Addressed to the Chief General Manager-in-Charge , Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai



A person resident outside India other than NRIs / PIO may make an application and seek prior approval of Reserve Bank<sup>23</sup>, for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

#### **4. Restictions**

An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom) or engaged in Print Media.

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<sup>23</sup> Addressed to the Chief General Manager-in-Charge , Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai



## Annex - 1

### (PART I, Section I, para 7(a))

#### Sector-specific policy for foreign investment

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/ regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted upto 100% on the automatic route, subject to applicable laws/ regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
<b>AGRICULTURE</b>			
<b>1.</b>	<b>Agriculture &amp; Animal Husbandry</b>		
	a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and production of Seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and d) services related to agro and allied sectors  <b>Note: Besides the above, FDI is not allowed in any other agricultural sector/activity</b>	100%	Automatic
<b>1.1</b>	<b>Other Conditions :</b>		
	I. For companies dealing with development of transgenic seeds/vegetables, the following conditions apply:  (i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.  (ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.		
	(iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.		





Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).</p> <p>(v) Import of materials shall be in accordance with National Seeds Policy.</p> <p>II. The term 'under controlled conditions' covers the following:</p> <p><input type="checkbox"/> 'Cultivation under controlled conditions' for the categories of Floriculture, Horticulture, Cultivation of vegetables and Mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro- climatic conditions are regulated anthropogenically.</p> <p><input type="checkbox"/> In case of Animal Husbandry, scope of the term 'under controlled Conditions' covers–</p> <p>o Rearing of animals under intensive farming systems with stall- feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems.</p> <p>o Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.</p> <p><input type="checkbox"/> In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers –</p> <p>o Aquariums</p> <p>o Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.</p> <p><input type="checkbox"/> In the case of apiculture, scope of the term "under controlled conditions" covers–</p> <p>o Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.</p>		
2	<b>Tea Plantation</b>		
2.1	Tea sector including tea plantations <b>Note: Besides the above, FDI is not allowed in any other plantation sector/activity</b>	100%	Government
2.2	<b>Other Conditions :</b>		
	(i) Compulsory divestment of 26% equity of the company in favour of an Indian		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	partner/Indian public within a period of 5 years  (ii) Prior approval of the State Government concerned in case of any future land use change.		
<b>3</b>	<b>MINING</b>		
3.1	<b>Mining and Exploration of metal and non metal ores</b> including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; <b>subject to</b> the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
3.2	<b>Coal and Lignite</b>		
	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and <b>subject to</b> the provisions of Coal Mines (Nationalization) Act, 1973	100%	Automatic
	(2) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
3.3	<b>Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities</b>		
3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities <b>subject to</b> sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957)	100%	Government
3.3.2	<b>Other conditions:</b>		
	India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as 'prescribed substances' under the Atomic Energy Act, 1962.  Under the Industrial Policy Statement 1991, mining and production of minerals		
	classified as 'prescribed substances' and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422 dated 6 <sup>th</sup> October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).  Vide Notification No. S.O.61(E) dated 18.1.2006, the Department of Atomic		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>Energy re-notified the list of 'prescribed substances' under the Atomic Energy Act 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds and minerals/concentrates including Zircon, were removed from the list of prescribed substances'.</p> <p>(i) FDI for separation of titanium bearing minerals &amp; ores will be subject to the following additional conditions viz.:</p> <p>(A) value addition facilities are set up within India along with transfer of technology;</p> <p>(B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.</p> <p>(ii) FDI will not be allowed in mining of 'prescribed substances' listed in the Notification No. S.O. 61(E) dated 18.1.2006 issued by the Department of Atomic Energy.</p> <p>Clarification: (1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product.</p> <p>(2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.</p>		
<b>4</b>	<b>Petroleum &amp; Natural Gas</b>		
4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/ pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the	100%	Automatic
	Government on private participation in exploration of oil and the discovered fields of national oil companies,		
4.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Government
<b>5.</b>	<b>MANUFACTURING</b> <b>Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)</b>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
5.1	FDI in MSEs [as defined under Micro, Small And Medium Enterprises Development Act, 2006 (MSMED, Act 2006)] will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act 1951.		
<b>6</b>	<b>DEFENCE</b>		
6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	26%	Government
6.2.	<p><b>Other conditions:</b></p> <p>(i) Licence applications will be considered and licences given by the Department of Industrial Policy &amp; Promotion, Ministry of Commerce &amp; Industry, in consultation with Ministry of Defence.</p> <p>(ii) The applicant should be an Indian company / partnership firm.</p> <p>(iii) The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company / partnership firm being resident Indians.</p> <p>(iv) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.</p> <p>(v) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R &amp; D base.</p> <p>(vi) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.</p> <p>(vii) There would be a three-year lock-in period for transfer of equity from one non-resident investor to another non-resident investor (including NRIs &amp; erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the Government.</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(viii) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.</p> <p>(ix)The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.</p> <p>(x) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.</p> <p>(xi) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.</p> <p>(xii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R &amp; D will have to be provided by the</p>		
	<p>licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self- certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.</p> <p>(xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.</p> <p>(xiv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons / entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.</p> <p>(xv) Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.</p>		
SERVICES SECTOR			
INFORMATION SERVICES			
7 <sup>24</sup>	Broadcasting		
7.1	Broadcasting Carriage Services		

<sup>24</sup> With effect from 20th day of September 2012



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
7.1.1	(1) <b>Teleports</b> (setting up of up-linking HUBs/ Teleports); (2) <b>Direct to Home (DTH)</b> ; (3) <b>Cable Networks</b> (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) <b>Mobile TV</b> ; (5) <b>Headend-in-the Sky Broadcasting Service (HITS)</b>	74%	Automatic up to 49%  Government route beyond 49% and up to 74%
7.1.2	<b>Cable Networks</b> (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs).	49%	Automatic
7.2	<b>Broadcasting Content Services</b>		
7.2.1	<b>Terrestrial Broadcasting FM (FM Radio)</b> , subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations.	26%	Government
7.2.2	<b>Up-linking of 'News &amp; Current Affairs' TV Channels</b>	26%	Government
7.2.3	<b>Up-linking a Non-'News &amp; Current Affairs' TV Channels / Down- linking of TV Channels</b>	100%	Government
7.3	FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.		
7.4	Foreign investment (FI) in companies engaged in all the aforesaid services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.		
7.5	The foreign investment (FI) limit in companies engaged in the aforesaid activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.		
7.6	Foreign investment in the aforesaid broadcasting carriage services will be subject to the following security conditions/terms:  <b>Mandatory Requirement for Key Executives of the Company</b> (i) The majority of Directors on the Board of the Company shall be Indian Citizens.		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(ii) The Chief Executive Officer (CEO), Chief Officer In-charge of technical network operations and Chief Security Officer should be resident Indian Citizens.</p> <p><b>Security Clearance of Personnel</b></p> <p>(iii) The Company, all Directors on the Board of Directors and such key executives like Managing Director / Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), shareholders who individually hold 10% or more paid-up capital in the company and any other category, as may be specified by the Ministry of Information and Broadcasting from time to time, shall require to be security cleared.</p> <p>In case of the appointment of Directors on the Board of the Company and such key executives like Managing Director / Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), etc., as may be specified by the Ministry of Information and Broadcasting from time to time, prior permission of the Ministry of Information and Broadcasting shall have to be obtained.</p> <p>It shall be obligatory on the part of the company to also take prior permission from the Ministry of Information and Broadcasting before effecting any change in the Board of Directors.</p> <p>(iv) The Company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more that 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment. The security clearance shall be required to be obtained every two years.</p> <p><b>Permission <i>vis-a-vis</i> Security Clearance</b></p> <p>(v) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith.</p> <p>(vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel is denied or withdrawn for any reasons whatsoever, the permission holder/licensee will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government, failing which the permission/license granted shall be revoked and the company shall be disqualified to hold any such Permission/license in future for a period of five years.</p>		
	<p><b>Infrastructure/Network/Software related requirement</b></p> <p>(vii) The officers/officials of the licensee companies dealing with the lawful interception of Services will be resident Indian citizens.</p> <p>(viii) Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company. Clearance from the licensor would be required if such information is to be provided to anybody else.</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(ix) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant Law.</p> <p>(x) The Company must provide traceable identity of their subscribers.</p> <p><b>Monitoring, Inspection and Submission of Information</b></p> <p>(xi) The Company should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location as and when required by Government.</p> <p>(xii) The company, at its own costs, shall, on demand by the government or its authorized representative, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.</p> <p>(xiii) The Government of India, Ministry of Information &amp; Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government or its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the company's activities and operations. Continuous monitoring, however, will be confined only to security related aspects, including screening of objectionable content.</p> <p>(xiv) The inspection will ordinarily be carried out by the government of India, Ministry of Information &amp; Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection.</p> <p>(xv) The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time.</p> <p>(xvi) The permission holder/licensee shall be liable to furnish the Government of India or its authorized representative or TRAI or its authorized representative, such reports, accounts, estimates, returns or such other relevant information and at such periodic intervals or such times as may be required.</p>		
	<p>(xvii) The service providers should familiarize/train designated officials of the government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems.</p> <p><b>National Security Conditions</b></p> <p>(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. The Government of India, Ministry of Information and Broadcasting shall have the right to temporarily suspend the permission of the permission holder/Licensee in public interest or for national security for such period or periods as it may direct. The company shall immediately</p>		





Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission, in future, for a period of five years.</p> <p>(xix) The company shall not import or utilize any equipment, which are identified as unlawful and/or render network security vulnerable.</p> <p><b>Other conditions</b></p> <p>(xx) Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services.</p> <p>(xxi) Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.</p>		
<b>8.</b>	<b>Print Media</b>		
8.1	Publishing of Newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment NRIs/PIOs/FII)	Government
8.2.1	<b>Other Conditions:</b>		
	<p>(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.</p> <p>(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information &amp; Broadcasting on 4.12.2008.</p>		
8.3	Publishing / printing of Scientific and Technical Magazines / specialty journals / periodicals, <b>subject to</b> compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
8.4	Publication of facsimile edition of foreign newspapers	100%	Government
8.4.1	<b>Other Conditions:</b>		
	<p>(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.</p> <p>(ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956.</p> <p>(iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.		
<b>9</b>	<b>Civil Aviation</b>		
9.1	<p>The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services / Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.</p> <p>For the purposes of the Civil Aviation sector:</p> <p>(i) 'Airport' means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;</p> <p>(ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;</p> <p>(iii)"Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;</p> <p>(iv)"Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;</p> <p>(v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;</p> <p>(vi)"Helicopter" means a heavier-than -air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;</p> <p>(vii) "Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;</p> <p>(viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Cargo airlines; (ix)"Cargo airlines" would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;</p> <p>(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;</p> <p>(xi) "Ground Handling" means (i) ramp handling , (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
9.2.	<b>Airports</b>		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic upto 74%  Government route beyond 74%
9.3 <sup>25</sup>	<b>Air Transport Services</b>		
	(1) Scheduled Air Transport Service / Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic upto 49% Government route beyond 49% and up to 74%
	(3) Helicopter services / seaplane services requiring DGCA approval	100%	Automatic
9.3.1	<b>Other Conditions</b>		
	<p>(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.</p> <p>(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.</p> <p>(c) Foreign airlines are also, henceforth, allowed to invest, in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:</p> <p>(i) It would be made under the Government approval route.</p> <p>(ii) The 49% limit will subsume FDI and FII investment.</p> <p>(iii) The investments so made would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/ Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations.</p> <p>(iv) A Scheduled Operator's Permit can be granted only to a company:</p> <p><i>a) that is registered and has its principal place of business within India;</i>  <i>b) the Chairman and at least two-thirds of the Directors of which are citizens of</i></p>		

<sup>25</sup> With effect from 20th day of September 2012



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p><i>India; and</i></p> <p><i>c) the substantial ownership and effective control of which is vested in Indian nationals.</i></p> <p>(v) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment; and</p> <p>(vi) All technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.</p> <p>Note: The FDI limits/entry routes, mentioned at paragraph 9.3(1) and 9.3(2) above, are applicable in the situation where there is no investment by foreign airlines.</p> <p>(d) The policy mentioned at (c) above is not applicable to M/s Air India Limited.</p>		
9.4	<b>Other services under Civil Aviation sector</b>		
	(1) Ground Handling Services <b>subject to</b> sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic upto 49%  Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
10	<b>Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.</b>	100%	Government
11	<b>Construction Development: Townships, Housing, Built-up infrastructure</b>		
11.1	Townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure)	100%	Automatic
11.2	<p>Investment will be subject to the following conditions:</p> <p>(1) Minimum area to be developed under each project would be as under:</p> <p>(i) In case of development of serviced housing plots, a minimum land area of 10 hectares</p> <p>(ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(iii) In case of a combination project, any one of the above two conditions would suffice</p> <p>(2) Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.</p> <p>(3) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. Original investment means the entire amount brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each installment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.</p> <p>(4) At least 50% of each such project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, 'undeveloped plots' will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.</p> <p>(5) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.</p> <p>(6) The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.</p> <p>(7) The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.</p> <p>Note:</p> <p>(i) The conditions at (1) to (4) above would not apply to Hotels &amp; Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs.</p> <p>(ii) FDI is not allowed in Real Estate Business.</p>		
<b>12</b>	<b>Industrial Parks – new and existing</b>	<b>100%</b>	<b>Automatic</b>
12.1	(i) "Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(ii) “Infrastructure” refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.</p> <p>(iii) “Common Facilities” refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.</p> <p>(iv) <u>“Allocable area” in the Industrial Park means-</u></p> <p>(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.</p> <p>(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.</p> <p>(c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.</p> <p>(v) “Industrial Activity” means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied R&amp;D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.</p>		
12.2	<p>FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 11 above, provided the Industrial Parks meet with the under-mentioned conditions:</p> <p>(i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;</p> <p>(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.</p>		
<b>13</b>	<b>Satellites – Establishment and operation</b>		
13.1	Satellites – Establishment and operation, subject to the sectoral guidelines of Department of Space / ISRO	74%	Government
<b>14</b>	<b>Private Security Agencies</b>		
<b>15</b>	<b>Telecom Services</b>		
	Investment caps and other conditions for specified services are given below. However, licensing and security requirements notified by the Department of		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	Telecommunications will need to be complied with for all services.		
15.1	<b>(i) Telecom services</b>	74%	Automatic upto 49%  Government route beyond 49% and upto 74%
15.1.1	<b>Other conditions:</b>		
	<p>(1) <u>General Conditions:</u></p> <p>(i) This is applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.</p> <p>(ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. In any case, the 'Indian' shareholding will not be less than 26 Percent.</p> <p>(iii) FDI in the licensee company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.</p> <p>(iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.</p> <p>(v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.</p> <p>(2) <u>Security Conditions:</u></p> <p>(i) The Chief Officer In-charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.</p> <p>(ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate / parents of the licensee company. Clearance from the licensor (Department of Telecommunications) would be required if such information is to be provided to anybody else.</p> <p>(iii) For security reasons, domestic traffic of such entities as may be identified / specified by the licensor shall not be hauled/routed to any place outside India.</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.</p> <p>(v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.</p> <p>(vi) The majority Directors on the Board of the company shall be Indian citizens.</p> <p>(vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require security clearance by Ministry of Home Affairs (MHA). Security clearance shall be required on yearly basis. In case something adverse is found during the security clearance, the direction of MHA shall be binding on the licensee.</p> <p>(viii) The Company shall not transfer the following to any person/place outside India:-</p> <p style="padding-left: 40px;">(a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and</p> <p style="padding-left: 40px;">(b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).</p> <p>(ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.</p> <p>(x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.</p> <p>(xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Ministry of Home Affairs.</p> <p>(xii) Under no circumstances, should any RA to the suppliers / manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.</p> <p>(xiii) The licensee company is not allowed to use remote access facility for monitoring of content.</p> <p>(xiv) Suitable technical device should be made available at Indian end to the designated security agency /licensor in which a mirror image of the remote access information is available on line for monitoring purposes.</p> <p>(xv) Complete audit trail of the remote access activities pertaining to the network</p>		





Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.</p> <p>(xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.</p> <p>(xvii) The telecom service providers should familiarize / train Vigilance Technical Monitoring (VTM)/security agency officers / officials in respect of relevant operations / features of their systems.</p> <p>(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.</p> <p>(xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.</p> <p>(xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.</p> <p>(xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this circular irrespective of the level of FDI.</p> <p>(xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.</p> <p>(3) The above General Conditions and Security Conditions shall also be applicable to the companies operating telecom service(s) with the FDI cap of 49%.</p> <p>(4) All the telecom service providers shall submit a compliance report on the aforesaid conditions to the licensor on 1st day of July and January every year.</p>		
15.2	<p>(a) ISP with gateways</p> <p>(b) ISP's not providing gateways i.e. without gate-ways (both for satellite and marine cables)</p> <p>Note: The new guidelines of August 24, 2007 Department of Telecommunications provide for new ISP licenses with FDI up to 74%.</p> <p>(c) Radio paging</p> <p>(d) End-to-End bandwidth</p>	74%	<p>Automatic upto 49%</p> <p>Government route beyond 49% and upto 74%</p>



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
15.3	<p>(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I); (b) Electronic Mail; (c) Voice Mail</p> <p><b>Note:</b> Investment in all the above activities is subject to the conditions that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.</p>	100%	<p>Automatic upto 49%</p> <p>Government route beyond 49%</p>
16.	<b>TRADING</b>		
16.1	<b>(i) Cash &amp; Carry Wholesale Trading / Wholesale Trading (including sourcing from MSEs)</b>	100%	Automatic
16.1.1	<p>Definition: Cash &amp; Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.</p>		
16.1.2	<p>Guidelines for Cash &amp; Carry Wholesale Trading/Wholesale Trading (WT):</p> <p>(a) For undertaking WT, requisite licenses / registration / permits, as specified under the relevant Acts/Regulations / Rules / Orders of the State Government / Government Body / Government Authority/Local Self-Government Body under that State Government should be obtained.</p> <p>(b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash &amp; carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:</p> <p>(I) Entities holding sales tax / VAT registration /service tax /excise duty registration; or</p> <p>(II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/ Government Body/ Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or</p> <p>(III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities / Local Self Government Bodies; or</p> <p>(IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p><b>Note: An Entity, to whom WT is made, may fulfill any one of the 4 conditions.</b></p> <p>(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.</p> <p>(d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture</p> <p>(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.</p> <p>(f) A Wholesale / Cash &amp; carry trader cannot open retail shops to sell to the consumer directly.</p>		
<b>16.2</b>	<b>E-commerce activities</b>	100%	Automatic
	E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
<b>16.3</b>	<b>Test marketing</b> of such items for which a company has approval for manufacture, provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facility commences simultaneously with test marketing.	100%	Government
<b>16.4<sup>26</sup></b>	<b>Single Brand product retail trading</b>	100%	Government
	<p>(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>(2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a 'Single Brand' only.</p> <p>(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.</p> <p>(c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.</p>		

<sup>26</sup> With effect from 20th day of September 2012



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(d) Only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, through a legally tenable agreement, with the brand owner for undertaking single brand product retail trading in respect of specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition.</p> <p>(e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years; total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received, Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail trading.</p> <p>(f) Retail trading, in any form, by means of e-commerce, would not be permissible for companies with FDI, engaged in the activity of single brand retail trading.</p> <p>(3) Applications seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy &amp; Promotion. The application would specifically indicate the product/ product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/ product categories to be sold under 'Single Brand' would require a fresh approval of the Government.</p> <p>(4) Applications would be processed in the Department of Industrial Policy &amp; Promotion, to determine whether the proposed investments satisfies the notified guidelines, before being considered by the FIPB for Government approval.</p>		
16.5 <sup>27</sup>	<b>Multi Brand Retail Trading</b>	51%	Government
	<p>FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:</p> <p>(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.</p> <p>(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.</p> <p>(iii) At least 50% of total FDI brought in shall be invested in 'backend infrastructure'</p>		

<sup>27</sup> With effect from 20th day of September 2012



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>within three years of the first tranche of FDI, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back end infrastructure.</p> <p>(iv) At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries' which have a total investment in plant &amp; machinery not exceeding US \$1.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry' for this purpose. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.</p> <p>(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.</p> <p>(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may also cover an area of 10 kms. around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking; In States / Union Territories not having cities with population of more than 10 lakh as per 2011 Census, retail sales outlets may be set up in the cities of their choice, preferably the largest city and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities. The locations of such outlets will be restricted to conforming areas, as per the Master/ Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.</p> <p>(vii) Government will have the first right to procurement of agricultural products.</p> <p>(viii) The above policy is an enabling policy only and the State Governments/ Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The States / Union Territories which have conveyed their concurrence are as under :</p> <ol style="list-style-type: none"> <li>1. Andhra Pradesh</li> <li>2. Assam</li> <li>3. Delhi</li> <li>4. Haryana</li> <li>5. Jammu &amp; Kashmir</li> <li>6. Maharashtra</li> <li>7. Manipur</li> </ol>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	8. Rajasthan 9. Uttarkhand 10. Daman & Diu and Dadra and Nagar Haveli (Union Territories)  The States/Union Territories, which are willing to permit establishment of retail outlets under this policy, would convey their concurrence to the Government of India through the Department of Industrial Policy & Promotion and additions would be made accordingly. The establishment of the retail sales outlets will be in compliance of applicable State / Union Territory laws/ regulations, such as the Shops and Establishments Act etc.  (ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi brand retail trading.  (x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.		
	<b>FINANCIAL SERVICES</b>  Foreign investment in other financial services , other than those indicated below, would require prior approval of the Government:		
<b>17</b>	<b>Asset Reconstruction Companies</b>		
17.1	'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).	49% of paid-up capital of ARC	Government
17.2	<b>Other conditions:</b>  (i) Persons resident outside India, other than Foreign Institutional Investors (FIIs), can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs.  (ii) However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest up to 49 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.  (iii) Any individual investment of more than 10% would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.		
<b>18.</b>	<b>Banking –Private sector</b>		
18.1	Banking –Private sector	74% including investment by FIIs	Automatic upto 49%  Government



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
			route beyond 49% and upto 74%
18.2	<b>Other conditions:</b>		
	<p>(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.</p> <p>(2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.</p> <p>(3) The stipulations as above will be applicable to all investments in existing private sector banks also.</p> <p>(4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs and NRIs will be as follows:</p> <p>(i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent of the total paid-up capital, aggregate limit for all FIIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.</p> <p>(a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital.</p> <p>(b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non- repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.</p> <p>(c) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.</p> <p>(d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para 3.6.2 of DIPP's Circular 1 of 2012 as applicable.</p> <p>(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>continue to apply.</p> <p>(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to non-resident investors as well.</p> <p>(ii) Setting up of a subsidiary by foreign banks</p> <p>(a) Foreign banks will be permitted to either have branches or subsidiaries but not both.</p> <p>(b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.</p> <p>(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.</p> <p>(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.</p> <p>(e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.</p> <p>(f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI</p> <p>(g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.</p> <p>(iii) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.</p>		
<b>19</b>	<b>Banking- Public Sector</b>		
19.1	Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20% (FDI and Portfolio Investment)	Government
<b>20</b>	<b>Commodity Exchanges</b>		
20.1	1. Futures trading in commodities are regulated under the Forward Contracts		





Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.</p> <p>2. For the purposes of this chapter,</p> <p>(i) “Commodity Exchange” is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.</p> <p>(ii) “recognized association” means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952</p> <p>(iii) “Association” means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.</p> <p>(iv) “Forward contract” means a contract for the delivery of goods and which is not a ready delivery contract.</p> <p>(v) “Commodity derivative” means-</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> a contract for delivery of goods, which is not a ready delivery contract; or</li> <li><input type="checkbox"/> a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.</li> </ul>		
20.3	<b>Other conditions:</b>		
	<p>(i) FII purchases shall be restricted to secondary market only and</p> <p>(ii) No non-resident investor / entity, including persons acting in concert, will hold more than 5% of the equity in these companies.</p>		
<b>21</b>	<b>Credit Information Companies (CIC)</b>		
21.1	Credit Information Companies	49% (FDI & FII)	Government
21.2	<b>Other Conditions:</b>		
	<p>(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.</p> <p>(2) Foreign investment is permitted under the Government route, subject to regulatory clearance from RBI.</p> <p>(3) Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.</p> <p>(4) Such FII investment would be permitted subject to the conditions that:</p>		



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>(a) No single entity should directly or indirectly hold more than 10% equity.</p> <p>(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and</p> <p>(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.</p>		
<b>22</b>	<b>Infrastructure Company in the Securities Market</b>		
22.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Government (For FDI)
22.2	<b>Other Conditions:</b>		
22.2.1	FII can invest only through purchases in the secondary market		
<b>23</b>	<b>Insurance</b>		
23.1	Insurance	26%	Automatic
23.2.	<b>Other Conditions:</b>		
	<p>(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route.</p> <p>(2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory &amp; Development Authority for undertaking insurance activities.</p>		
<b>24</b>	<b>Non-Banking Finance Companies (NBFC)</b>		
24.1	<p>Foreign investment in NBFC is allowed under the automatic route in only the following activities:</p> <ul style="list-style-type: none"> <li>(i) Merchant Banking</li> <li>(ii) Under Writing</li> <li>(iii) Portfolio Management Services</li> <li>(iv) Investment Advisory Services</li> <li>(v) Financial Consultancy</li> <li>(vi) Stock Broking</li> <li>(vii) Asset Management</li> <li>(viii) Venture Capital</li> <li>(ix) Custodian Services</li> <li>(x) Factoring</li> <li>(xi) Credit Rating Agencies</li> <li>(xii) Leasing &amp; Finance</li> <li>(xiii) Housing Finance</li> <li>(xiv) Forex Broking</li> <li>(xv) Credit Card Business</li> <li>(xvi) Money Changing Business</li> <li>(xvii) Micro Credit</li> </ul>	100%	Automatic



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	(xviii) Rural Credit		
24.2	<b>Other Conditions:</b>		
	<p>(1) Investment would be subject to the following minimum capitalisation norms:</p> <p>(i) US \$0.5 million for foreign capital up to 51% to be brought upfront</p> <p>(ii) US \$ 5 million for foreign capital more than 51% and up to 75% to be brought upfront</p> <p>(iii) US \$ 50 million for foreign capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.</p> <p>(iv)<sup>28</sup> NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US\$ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by para 3.10.4.1 of DIPP Circular 1 of 2012 dated April 10, 2012, on Consolidated FDI Policy, therefore, shall not apply to downstream subsidiaries.</p> <p>(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.</p> <p>(vi) Non- Fund based activities : US\$ 0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:</p> <p>It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.</p> <p>Note: The following activities would be classified as Non-Fund Based activities:</p> <p>(a) Investment Advisory Services</p> <p>(b) Financial Consultancy</p> <p>(c) Forex Broking</p> <p>(d) Money Changing Business</p> <p>(e) Credit Rating Agencies</p> <p>(vii) This will be subject to compliance with the guidelines of RBI.</p> <p>Note: (i) Credit Card business includes issuance, sales, marketing &amp; design of</p>		

<sup>28</sup> With effect from 3rd day of October 2012



Sr. No.	Sector / Activity	% of Cap/Equity	Entry Route
	<p>various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.</p> <p>(ii) Leasing &amp; Finance covers only financial leases and not operating leases.</p> <p>(2) The NBFC will have to comply with the guidelines of the relevant regulator/ s, as applicable</p>		
<b>25</b>	<b>Pharmaceuticals</b>		
25.1	Greenfield	100%	Automatic
25.2	Existing Companies	100%	Government
<b>26<sup>29</sup></b>	<b>Power Exchanges</b>		
26.1	Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010	49% (FDI & FII)	Government (for FDI)
26.2	<b>Other conditions:</b>		
	<p>(i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital;</p> <p>(ii) FII investments would be permitted under the automatic route and FDI would be permitted under the government approval route;</p> <p>(iii) FII purchases shall be restricted to secondary market only;</p> <p>(iv) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and</p> <p>(v) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/ regulations; security and other conditionalities.</p>		

**Annex - 2**  
**(PART I, Section I, para 7 (c ) (iii)**

**(A) All Activities/ Sectors would require prior approval of the Government of India for FDI in accordance with the FDI policy issued by Government of India from time to time.**

**(B) Sectors prohibited for FDI**

- (a) Lottery Business including Government /private lottery, online lotteries, etc.
- (b) Gambling and Betting including casinos etc.
- (c) Business of Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights (TDRs)
- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

**Note:** Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.



**Annex - 3**  
**(PART I, Section I, para 8(b))**

**Terms and conditions for Transfer of Shares /Convertible Debentures, by way of Sale, from a Person Resident in India to a Person Resident Outside India and from a Person Resident Outside India to a Person Resident in India**

**1.1** In order to address the concerns relating to pricing, documentation, payment/ receipt and remittance in respect of the shares/ convertible debentures of an Indian company, in all sectors, transferred by way of sale, the parties involved in the transaction shall comply with the guidelines set out below.

**1.2 Parties involved in the transaction are** (a) seller (resident/non-resident), (b) buyer (resident/non-resident), (c) duly authorized agent/s of the seller and/or buyer, (d) Authorised Dealer bank (AD) branch and (e) Indian company, for recording the transfer of ownership in its books.

**2. Responsibilities / Obligations of the parties**

All the parties involved in the transaction would have the responsibility to ensure that the relevant regulations under FEMA are complied with and consequent on transfer of shares, the relevant individual limit/sectoral caps/foreign equity participation ceilings as fixed by Government are not breached. Settlement of transactions will be subject to payment of applicable taxes, if any.

**3. Method of payment and remittance/credit of sale proceeds**

**3.1** The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B)/Escrow accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO/Escrow accounts.



3.2. The sale proceeds of shares (net of taxes) sold by a person resident outside India may be remitted outside India. In case of FII, the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE /FCNR(B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes.

3.3 The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to payment of taxes, except in the case of OCBs whose accounts have been blocked by Reserve Bank.

#### **4. Documentation**

Besides obtaining a declaration in the enclosed Form FC-TRS (in quadruplicate), the AD branch should arrange to obtain and keep on record the following documents:

##### **4.1 For sale of shares by a person resident in India**

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
- iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity



participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.

- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. Copy of Broker's note if sale is made on Stock Exchange
- vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/ convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

#### **4.2 For sale of shares by a person resident outside India**

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.
- ii. Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- iii. If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited to NRE/NRO account, as applicable.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Accountant.





- vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

Shares/convertible debentures of Indian companies purchased under Portfolio Investment Scheme by NRIs, OCBs cannot be transferred, by way of sale under private arrangement.

Compliance is also to be ensured of the pricing and the reporting guidelines as stated under para 5 (Section I) and para 2 (Section V) respectively.



**Annex- 4**  
**(PART I, Section I, para 8 (b) II (iii))**

**Documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift**

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India or DCF method for listed companies and unlisted companies, respectively.
- vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/ convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.<sup>30</sup>
- viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing

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<sup>30</sup> AP (DIR Series) Circular No. 08 dated August 25, 2005



outside India does not exceed the rupee equivalent of USD 50,000 **during a financial year.**



**Annex - 5**  
**(PART I, Section I, para 8 (b) II (iii))**

**Definition of "relative" as given in Section 6 of Companies Act, 1956.**

A person shall be deemed to be a relative of another, if, and only if:

- (a) they are members of a Hindu undivided family ; or
- (b) they are husband and wife ; or
- (c) the one is related to the other in the manner indicated in Schedule IA  
(as under)

1. Father.
2. Mother (including step-mother).
3. Son (including stepson).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

\*\*\*\*\*



**Annex - 6**  
**[PART I, Section V, para 1 (i) ]**

**Report by the Indian company receiving amount of consideration for issue of shares / Convertible debentures under the FDI Scheme**

*( To be filed by the company through its Authorised Dealer Category – I bank, with the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the company making the declaration is situated, not later than 30 days from the date of receipt of the amount of consideration, as specified in para 9 (I) (A) of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000 )*

Permanent Account Number (PAN) of the investee company given by the IT Department	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td><td style="width: 5%;"></td> </tr> </table>																				

No.	Particulars	(In Block Letters)		
1.	Name of the Indian company  Address of the Registered Office			
	Fax			
	Telephone			
	e-mail			
2	<b>Details of the foreign investor/ collaborator</b>			
	Name  Address  Country			
3.	Date of receipt of funds			
4.	Amount			In foreign currency



5.	Whether investment is under Automatic Route or Approval Route  If Approval Route, give details (ref. no. of approval and date)	Automatic Route / Approval Route
6.	Name of the AD through whom the remittance is received	
7.	Address of the AD	

A Copy of the FIRC evidencing the receipt of consideration for issue of shares/ convertible debentures as above is enclosed.

(Authorised signatory of the investee company)	(Authorised signatory of the AD)
(Stamp)	(Stamp)

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**FOR USE OF THE RESERVE BANK ONLY:**

**Unique Identification Number for the remittance received:**

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**Annex - 7****[PART I, Section V, para 1 (i) ]****Know Your Customer (KYC) Form in respect of the non-resident investor**

Registered Name of the Remitter / Investor (Name, if the investor is an Individual)	
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the remitter	

\* Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter  
as prevalent in the remitter's country

***We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident investor.***

(Signature of the Authorised Official  
of the AD bank receiving the remittance)

Date :

Place:

Stamp :



**Annex - 8**  
**[PART I, Section V, para 1 (iii) ]**

**FC-GPR**

*(To be filed by the company through its Authorised Dealer Category – I bank with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company making the declaration is situated as and when shares / convertible debentures are issued to the foreign investor, along with the documents mentioned in item No. 4 of the undertaking enclosed to this Form)*

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>																				
Date of issue of shares / convertible debentures	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>																				

No.	Particulars	(In Block Letters)
1.	Name	
	Address of the Registered Office	
	State	
	Registration No. given by Registrar of Companies	
	Whether existing company or new company (strike off whichever is not applicable)	Existing company / New company
	If existing company, give registration number allotted by RBI for FDI, if any	
	Telephone	
	Fax	
	e-mail	





2.	Description of the main business activity	
	NIC Code	
	Location of the project and NIC code for the district where the project is located	
	Percentage of FDI allowed as per FDI policy	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable)	Automatic Route / Approval Route
3	<b>Details of the foreign investor / collaborator*</b>	
	Name	
	Address	
	Country	
	Constitution / Nature of the investing Entity [Specify whether	
	1. Individual	
	2. Company	
	3. FII	
	4. FVCI	
	5. Foreign Trust	
	6. Private Equity Fund	
	7. Pension / Provident Fund	
	8. Sovereign Wealth Fund (SWF) <sup>31</sup>	
	9. Partnership / Proprietorship Firm	
	10. Financial Institution	

\* If there is more than one foreign investor/collaborator, separate Annex may be included for items 3 and 4 of the Form.



11. NRIs / PIO 12. Others (please specify)]	
Date of incorporation	

4	Particulars of Shares / Convertible Debentures Issued							
(a)	Nature and date of issue							
		Nature of issue	Date of issue		Number of shares/ convertible debentures			
	01	IPO / FPO						
	02	Preferential allotment / private placement						
	03	Rights						
	04	Bonus						
	05	Conversion of ECB						
	06	Conversion of royalty (including lump sum payments)						
	07	Conversion against import of capital goods by units in SEZ						
	08	ESOPs						
	09	Share Swap						
	10	Others (please specify)						
		Total						
(b)	Type of security issued							
	No.	Nature of security	Number	Maturity	Face value	Premium	Issue Price per share	Amount of inflow*
	01	Equity						
	02	Compulsorily Convertible Debentures						
	03	Compulsorily Convertible Preference shares						
	04	Others (please specify)						
		Total						

<sup>31</sup> SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.



- i) In case the issue price is greater than the face value please give break up of the premium received.
- ii) \* In case the issue is against conversion of ECB or royalty or against import of capital goods by units in SEZ, a Chartered Accountant's Certificate certifying the amount outstanding on the date of conversion

(c)	Break up of premium	Amount
	Control Premium	
	Non competition fee	
	Others <sup>@</sup>	
	<b>Total</b>	

<sup>@</sup> *please specify the nature*

(d)	<b>Total inflow</b> (in Rupees) on account of issue of shares / convertible debentures to non-residents (including premium, if any) vide  (i) Remittance through AD: (ii) Debit to NRE/FCNR A/c with Bank _____ (iii) Others (please specify)  Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Schedule I to Notification No. FEMA 20 /2000-RB dated May 3, 2000, as amended from time to time.	
(e)	<b>Disclosure of fair value of shares issued**</b>	
	We are a listed company and the market value of a share as on date of the issue is*	
	We are an un-listed company and the fair value of a share is*	

\*\* *before issue of shares applicable)*

*\*(Please indicate as*

5. Post issue pattern of shareholding		
	<b>Equity</b>	<b>Compulsorily convertible Preference Shares/ Debentures</b>



Investor category		No. of shares	Amount (Face Value) Rs.	%	No. of shares	Amount (Face Value) Rs.	%
<b>a)</b>	<b>Non-Resident</b>						
	<b>01 Individuals</b>						
	<b>02 Companies</b>						
	<b>03 FIs</b>						
	<b>04 FVCIs</b>						
	<b>05 Foreign Trusts</b>						
	<b>06 Private Equity Funds</b>						
	<b>07 Pension/ Provident Funds</b>						
	<b>08 Sovereign Wealth Funds</b>						
	<b>09 Partnership/ Proprietorship Firms</b>						
	<b>10 Financial Institutions</b>						
	<b>11 NRIs/PIO</b>						
	<b>12 Others (please specify)</b>						
	<b>Sub Total</b>						
<b>b)</b>	<b>Resident</b>						
<b>Total</b>							



**DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY: *(Delete whichever is not applicable and authenticate)***

We hereby declare that:

1. We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3<sup>rd</sup> May 2000, as amended from time to time.

2. The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfill all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).

a) Shares issued on rights basis to non-residents are in conformity with Regulation 6 of the RBI Notification No FEMA 20/2000-RB dated 3<sup>rd</sup> May 2000, as amended from time to time.

**OR**

b) Shares issued are bonus.

**OR**

c) Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of de-merger or otherwise of an Indian company, duly approved by a court in India.

**OR**

d) Shares are issued under ESOP and the conditions regarding this issue have been satisfied

3. Shares have been issued in terms of SIA /FIPB approval No. \_\_\_\_\_ dated \_\_\_\_\_

4 The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations. 5. We enclose the following documents in compliance with Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

(i) A certificate from our Company Secretary certifying that



- (a) all the requirements of the Companies Act, 1956 have been complied with;
  - (b) terms and conditions of the Government approval, if any, have been complied with;
  - (c) the company is eligible to issue shares under these Regulations; and
  - (d) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.
- (ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

6. Unique Identification Numbers given for all the remittances received as consideration for issue of shares/ convertible debentures/others (details as above), by Reserve Bank.

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R															
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(Signature of the Applicant)\*

\_\_\_\_\_

(Name in Block Letters)

\_\_\_\_\_

(Designation of the signatory)

\_\_\_\_\_

Place:

Date:

(\* To be signed by Managing Director/Director/Secretary of the Company)



**CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY OF THE  
INDIAN COMPANY ACCEPTING THE INVESTMENT:**

***(As per Para 9 (1) (B) (i) of Schedule 1 to Notification No. FEMA 20/2000-RB  
dated May 3, 2000)***

In respect of the abovementioned details, we certify the following :

1. All the requirements of the Companies Act, 1956 have been complied with.
2. Terms and conditions of the Government approval, if any, have been complied with.
3. The company is eligible to issue shares / convertible debentures/others under these Regulations.
4. The company has all original certificates issued by AD Category – I banks in India, evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(Name & Signature of the Company Secretary) (Seal)

**FOR USE OF THE RESERVE BANK ONLY:**

**Registration Number for the FC-GPR:**

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**Unique Identification Number allotted to the  
Company at the time of reporting receipt of  
remittance**

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**Annex – 9-I**  
**[PART I, Section V, para 2 ]**

<b>Form FC-TRS</b>		
<b>Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures/others by way of sale from resident to non resident / non-resident to resident</b>		
(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)		
<p><b>The following documents are enclosed</b></p> <p><i>For sale of shares / compulsorily and mandatorily convertible preference shares / debentures/others by a person resident in India</i></p> <ul style="list-style-type: none"> <li>i. Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document.</li> <li>ii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India.</li> <li>iii. Certificate indicating fair value of shares from a Chartered Accountant.</li> <li>iv. Copy of Broker's note if sale is made on Stock Exchange.</li> <li>v. Declaration from the buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures/others under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.</li> <li>vi. Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached.</li> </ul> <p><i>Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures/others by a person resident outside India</i></p> <ul style="list-style-type: none"> <li>vii. If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis.</li> <li>viii. No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Account.</li> </ul>		
<b>1</b>	<b>Name of the company</b>	





	Address (including e-mail , telephone Number, Fax no)	
	Activity	
	NIC Code No.	
<b>2</b>	<b>Whether FDI is allowed under Automatic route</b>	
	Sectoral Cap under FDI Policy	
<b>3</b>	<b>Nature of transaction</b> <i>(Strike out whichever is not applicable)</i>	Transfer from resident to non resident /  Transfer from non resident to resident
<b>4</b>	<b>Name of the buyer</b>	
	<b>Constitution / Nature of the investing Entity</b> Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF <sup>π</sup> ) 9. Partnership / Proprietorship	

<sup>π</sup> SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.



	firm 10. Financial Institution 11. NRIs / PIOs 12. others	
	Date and Place of Incorporation	
	Address of the buyer (including e-mail, telephone number. Fax no.)	
5	<b>Name of the seller</b>	
	<b>Constitution / Nature of the disinvesting entity</b> Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF <sup>¶</sup> ) 9. Partnership/ Proprietorship firm 10. Financial Institution 11. NRIs/PIOs 12. others	
	Date and Place of Incorporation	
	Address of the seller (including e-mail, telephone Number Fax	

<sup>¶</sup> SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.



	no)				
6	Particulars of earlier Reserve Bank / FIPB approvals				
7	Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures/others (such as FDI compliant instruments like participating interest/ rights in oil fields, etc.) to be transferred				
	<b>Date of the transaction</b>	<b>Number of shares CMCPS / debentures/others</b>	<b>Face value in Rs.</b>	<b>Negotiated Price for the transfer**in Rs.</b>	<b>Amount of consideration in Rs.</b>
8	Foreign Investments in the company		No. of shares	Percentage	
		Before the transfer			
		After the transfer			
9	Where the shares / CMCPS / debentures/others are listed on Stock Exchange				
	Name of the Stock exchange				
	Price Quoted on the Stock exchange				
	Where the shares / CMCPS / debentures/others are Unlisted				
	Price as per Valuation guidelines*				
	Price as per Chartered Accountants * / ** Valuation report				



(CA Certificate to be attached)

**Declaration by the transferor / transferee**

**I / We hereby declare that :**

- i. The particulars given above are true and correct to the best of my/our knowledge and belief.
- ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures/others as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.
- iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures/others of the company in terms of the FDI Policy.
- iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.

**Signature of the Declarant or  
his duly authorised agent**

**Date:**

**Note:**

*In respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/others from resident to non resident the declaration has to be signed by the non resident buyer, and in respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/others from non-resident to resident the declaration has to be signed by the non-resident seller.*



### **Certificate by the AD Branch**

It is certified that the application is complete in all respects.

The receipt /payment for the transaction are in accordance with FEMA Regulations / Reserve Bank guidelines.

Signature

Name and Designation of the Officer

**Date:** Name of the AD Branch

AD Branch Code

AD Branch Code

**Know Your Customer (KYC) Form in respect of the non-resident investor**

Registered Name of the Remitter / Investor (Name, if the investor is an Individual)	
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the remitter	

\*Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter as prevalent in the remitter's country.

***We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident investor.***

(Signature of the Authorised Official of the  
AD bank receiving the remittance)

Date:

Place:

**Stamp**



**Annex - 10**  
**[PART I, Section V, para 5]**

**Form DR**

[Refer to paragraph 4(2) of Schedule 1]

**Return to be filed by an Indian Company who has arranged issue of GDR/ADR**

**Instructions :** The Form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai.

1. Name of the Company
2. Address of Registered Office
3. Address for Correspondence
4. Existing Business (please give the NIC Code of the activity in which the company is predominantly engaged)
5. Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof
6. Name and address of the Depository abroad
7. Name and address of the Lead Manager/ Investment/Merchant Banker
8. Name and address of the Sub-Managers to the issue
9. Name and address of the Indian Custodians
10. Details of FIPB approval (please quote the relevant NIC Code if the GDRs/ADRs are being issued under the Automatic Route)
11. Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details
12. Details of the Equity Capital

	<u>Before Issue</u>	<u>After Issue</u>
(a) Authorised Capital		
(b) Issued and Paid-up Capital		
(i) Held by persons Resident in India		



(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)

(iii) Held by NRIs/PIOs/OCBs

(iv) Held by FIIs

Total Equity held by non-residents

(c) Percentage of equity held by non-residents to total paid-up capital

13. Whether issue was on private placement basis. If yes, please give details of the investors and GDRs/ADRs issued to each of them

14. Number of GDRs/ADRs issued

15. Ratio of GDRs/ADRs to underlying shares

16. Issue Related Expenses

(a) Fee paid/payable to Merchant Bankers/Lead Manager

(i) Amount (in US\$)

(ii) Amount as percentage to the total issue

(b) Other expenses

17. Whether funds are kept abroad. If yes, name and address of the bank

18. Details of the listing arrangement

Name of Stock Exchange

Date of commencement of trading

19. The date on which GDRs/ADRs issue was launched

20. Amount raised (in US \$)

21. Amount repatriated (in US \$)





Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with.

Sd/-  
Chartered Accountant

Sd/-  
Authorised Signatory of the  
Company



**Form DR - Quarterly**

[Refer to paragraph 4(3) of Schedule 1]

**Quarterly Return**

(to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)

1. Name of the Company
2. Address
3. GDR/ADR issue launched on
4. Total No. of GDRs/ADRs issued
5. Total amount raised
6. Total interest earned till end of quarter
7. Issue expenses and commission etc.
8. Amount repatriated
9. Balance kept abroad - Details
  - (i) Banks Deposits
  - (ii) Treasury Bills
  - (iii) Others (please specify)
10. No. of GDRs/ADRs still outstanding
11. Company's share price at the end of the quarter
12. GDRs/ADRs price quoted on overseas stock exchange as at the end of the quarter

Certified that the funds raised through GDRs/ADRs have not been invested in stock market or real estate.

Sd/-  
Chartered Accountant

Sd/-  
Authorised Signatory of the Company



## Appendix

**List of Important Circulars/Notifications which have been consolidated in the Master Circular on Foreign Investments in India and investments in proprietary / partnership firms**

**Notifications**

Sl.No.	Notification	Date
1.	<a href="#">No. FEMA 32/2000-RB</a>	December 26, 2000
2.	<a href="#">No. FEMA 35/2001-RB</a>	February 16, 2001
3.	<a href="#">No. FEMA 41/2001-RB</a>	March 2, 2001
4.	<a href="#">No. FEMA 45/2001-RB</a>	September 20, 2001
5.	<a href="#">No. FEMA 46/2001-RB</a>	November 29, 2001
6.	<a href="#">No. FEMA 50/2002-RB</a>	February 20, 2002
7.	<a href="#">No. FEMA 55/2002-RB</a>	March 7, 2002
8.	<a href="#">No. FEMA 76/2002-RB</a>	November 12, 2002
9.	<a href="#">No. FEMA 85/2003-RB</a>	January 17, 2003
10.	<a href="#">No. FEMA 94/2003-RB</a>	June 18, 2003
11.	<a href="#">No. FEMA 100/2003-RB</a>	October 3, 2003
12.	<a href="#">No. FEMA 101/2003-RB</a>	October 3, 2003
13.	<a href="#">No. FEMA 106/2003-RB</a>	October 27, 2003
14.	<a href="#">No. FEMA 108/2003-RB</a>	January 1, 2004
15.	<a href="#">No. FEMA 111/2004-RB</a>	March 6, 2004
16.	<a href="#">No. FEMA.118/2004-RB</a>	June 29, 2004
17.	<a href="#">No. FEMA.122/2004-RB</a>	August 30, 2004
18.	<a href="#">No. FEMA.125/2004-RB</a>	November 27, 2004
19.	<a href="#">No. FEMA.130/2005-RB</a>	March 17, 2005
20.	<a href="#">No. FEMA.131/2005-RB</a>	March 17, 2005
21.	<a href="#">No. FEMA.138/2005-RB</a>	July 22, 2005
22.	<a href="#">No. FEMA.136/2005-RB</a>	July 19, 2005
23.	<a href="#">No. FEMA.137/2005-RB</a>	July 22, 2005
24.	<a href="#">No. FEMA.138/2005-RB</a>	July 22, 2005
25.	<a href="#">No. FEMA.149/2006-RB</a>	June 9, 2006
26.	No. FEMA.153/2006-RB	May 31, 2007
27.	No. FEMA.167/2007-RB	October 23, 2007
28.	<a href="#">No. FEMA.170/2007-RB</a>	November 13, 2007
29.	<a href="#">No. FEMA.179/2008-RB</a>	August 22, 2008
30.	<a href="#">No. FEMA.202/2009-RB</a>	November 10, 2009
31.	<a href="#">No. FEMA.205/2010-RB</a>	April 7, 2010



Circulars		
Sl.No.	Circulars	Date
1.	<a href="#">A.P.DIR(Series) Circular No.14</a>	September 26, 2000
2.	<a href="#">A.P.DIR(Series) Circular No.24</a>	January 6, 2001
3.	<a href="#">A.P.DIR(Series) Circular No.26</a>	February 22, 2001
4.	<a href="#">A.P.DIR(Series) Circular No.32</a>	April 28, 2001
5.	<a href="#">A.P.DIR(Series) Circular No.13</a>	November 29, 2001
6.	<a href="#">A.P.DIR(Series) Circular No.21</a>	February 13, 2002
7.	<a href="#">A.P.DIR(Series) Circular No.29</a>	March 11, 2002
8.	<a href="#">A.P.DIR(Series) Circular No.45</a>	November 12, 2002
9.	<a href="#">A.P.DIR(Series) Circular No.52</a>	November 23, 2002
10.	<a href="#">A.P.DIR(Series) Circular No.68</a>	January 13, 2003
11.	<a href="#">A.P.DIR(Series) Circular No.69</a>	January 13, 2003
12.	<a href="#">A.P.DIR(Series) Circular No.75</a>	February 3, 2003
13.	<a href="#">A.P.DIR(Series) Circular No.88</a>	March 27, 2003
14.	<a href="#">A.P.DIR(Series) Circular No.101</a>	May 5, 2003
15.	<a href="#">A.P.DIR(Series) Circular No.10</a>	August 20, 2003
16.	<a href="#">A.P.DIR(Series) Circular No.13</a>	September 1, 2003
17.	<a href="#">A.P.DIR(Series) Circular No.14</a>	September 16, 2003
18.	<a href="#">A.P.DIR(Series) Circular No.28</a>	October 17, 2003
19.	<a href="#">A.P.DIR(Series) Circular No.35</a>	November 14, 2003
20.	<a href="#">A.P.DIR(Series) Circular No.38</a>	December 3, 2003
21.	<a href="#">A.P.DIR(Series) Circular No.39</a>	December 3, 2003
22.	<a href="#">A.P.DIR(Series) Circular No.43</a>	December 8, 2003
23.	<a href="#">A.P.DIR(Series) Circular No.44</a>	December 8, 2003
24.	<a href="#">AP (DIR Series) Circular No.53</a>	December 17, 2003
25.	<a href="#">A.P.DIR(Series) Circular No.54</a>	December 20, 2003
26.	<a href="#">A.P.DIR(Series) Circular No.63</a>	February 3, 2004
27.	<a href="#">A.P.DIR(Series) Circular No.67</a>	February 6, 2004
28.	<a href="#">A.P.DIR(Series) Circular No.89</a>	April 24, 2004
29.	<a href="#">A.P.DIR(Series) Circular No.11</a>	September 13, 2004
30.	<a href="#">A.P.DIR(Series) Circular No.13</a>	October 1, 2004
31.	<a href="#">A.P.DIR(Series) Circular No.15</a>	October 1, 2004
32.	<a href="#">A.P.DIR(Series) Circular No.16</a>	October 4, 2004

33.	<a href="#">AP (DIR Series) Circular No. 04</a>	July 29, 2005
34.	<a href="#">A.P. (DIR Series) Circular No. 06</a>	August 11, 2005
35.	<a href="#">A.P. (DIR Series) Circular No. 07</a>	August 17, 2005
36.	<a href="#">A.P. (DIR Series) Circular No. 08</a>	August 25, 2005
37.	<a href="#">A. P. (DIR Series) Circular No. 10</a>	August 30, 2005
38.	<a href="#">A.P. (DIR Series) Circular No. 11</a>	September 05, 2005

39.	<a href="#">A.P. (DIR Series) Circular No.16</a>	November 11, 2005
40.	<a href="#">A.P.( DIR Series) Circular No. 24</a>	January 25, 2006
41.	<a href="#">A.P.( DIR Series) Circular No. 4</a>	July 28, 2006
42.	<a href="#">A.P.( DIR Series) Circular No. 12</a>	November 16, 2006
43.	<a href="#">A.P.( DIR Series) Circular No. 25</a>	December 22, 2006
44.	<a href="#">A.P.( DIR Series) Circular No. 32</a>	February 8, 2007
45.	<a href="#">A.P.( DIR Series) Circular No. 40</a>	April 20, 2007
46.	<a href="#">A.P.( DIR Series) Circular No. 62</a>	May 24, 2007
47.	<a href="#">A.P.( DIR Series) Circular No. 65</a>	May 31, 2007
48.	<a href="#">A.P.( DIR Series) Circular No. 73</a>	June 8, 2007
49.	<a href="#">A.P.( DIR Series) Circular No. 74</a>	June 8, 2007
50.	<a href="#">A.P.( DIR Series) Circular No. 2</a>	July 19, 2007
51.	<a href="#">A.P.( DIR Series) Circular No. 20</a>	December 14, 2007
52.	<a href="#">A.P.( DIR Series) Circular No. 22</a>	December 19, 2007
53.	<a href="#">A.P.( DIR Series) Circular No. 23</a>	December 31, 2007
54.	<a href="#">A.P.( DIR Series) Circular No. 40</a>	April 28, 2008
55.	<a href="#">A.P.( DIR Series) Circular No. 41</a>	April 28, 2008
56.	<a href="#">A.P.( DIR Series) Circular No. 44</a>	May 30, 2008
57.	<a href="#">A.P.( DIR Series) Circular No. 25</a>	October 17, 2008
58.	<a href="#">A.P.( DIR Series) Circular No. 63</a>	April 22, 2009
59.	<a href="#">A.P.( DIR Series) Circular No. 5</a>	July 22, 2009
60.	<a href="#">A.P.( DIR Series) Circular No. 47</a>	April 12, 2010
61.	<a href="#">A.P.( DIR Series) Circular No. 49</a>	May 4, 2010



62.	<a href="#">A.P.( DIR Series) Circular No. 13</a>	September 14, 2010
63.	<a href="#">A.P.( DIR Series) Circular No. 45</a>	March 15, 2011
64.	<a href="#">A.P.( DIR Series) Circular No. 54</a>	April 29, 2011
65.	<a href="#">A.P.( DIR Series) Circular No. 55</a>	April 29, 2011
66.	<a href="#">A.P.( DIR Series) Circular No. 57</a>	May 2, 2011
67.	<a href="#">A.P.( DIR Series) Circular No. 58</a>	May 2, 2011
68.	<a href="#">A.P.(DIR Series) Circular No.74</a>	June 30, 2011
69.	<a href="#">A.P. (DIR Series) Circular No. 8</a>	August 9, 2011
70.	<a href="#">A.P. (DIR Series) Circular No. 14</a>	September 15, 2011

71.	<a href="#">A. P. (DIR Series) Circular No. 42</a>	November 3, 2011
72.	<a href="#">A. P. (DIR Series) Circular No. 43</a>	November 4, 2011
73.	<a href="#">A. P. (DIR Series) Circular No. 45</a>	November 16, 2011
74.	<a href="#">A.P. (DIR Series) Circular No. 49</a>	November 22, 2011
75.	<a href="#">A.P. (DIR Series) Circular No. 55</a>	December 9, 2011
76.	<a href="#">A.P. (DIR Series) Circular No. 56</a>	December 9, 2011
77.	<a href="#">A.P. (DIR Series) Circular No. 66</a>	January 13, 2012
78.	<a href="#">A.P. (DIR Series) Circular No. 67</a>	January 13, 2012
79.	<a href="#">A.P. (DIR Series) Circular No. 89</a>	March 1, 2012
80.	<a href="#">A.P. (DIR Series) Circular No. 93</a>	March 19, 2012
81.	<a href="#">A.P. (DIR Series) Circular No. 94</a>	March 19, 2012
82.	<a href="#">A.P. (DIR Series) Circular No. 120</a>	May 8, 2012
83.	<a href="#">A.P. (DIR Series) Circular No. 121</a>	May 8, 2012
84.	<a href="#">A.P. (DIR Series) Circular No. 127</a>	May 15, 2012
85.	<a href="#">A.P. (DIR Series) Circular No. 133</a>	June 20, 2012
86.	<a href="#">A.P. (DIR Series) Circular No. 135</a>	June 25, 2012
87.	<a href="#">A.P. (DIR Series) Circular No. 137</a>	June 28, 2012
88.	<a href="#">A.P. (DIR Series) Circular No. 7</a>	July 16, 2012
89.	<a href="#">A.P. (DIR Series) Circular No. 16</a>	August 22, 2012
90.	<a href="#">A.P. (DIR Series) Circular No.19</a>	August 28, 2012
91.	<a href="#">A.P. (DIR Series) Circular No. 32</a>	September 21, 2012
92.	<a href="#">A.P. (DIR Series) Circular No. 36</a>	September 26, 2012
93.	<a href="#">A.P. (DIR Series) Circular No. 41</a>	October 10, 2012