RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
CENTRAL OFFICE
MUMBAI-400 001

Notification No.FEMA.312/2014-RB **Dated July 2, 2014**

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000), namely:-

1. Short Title & Commencement:-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014.

(ii) They shall be deemed to have come into force from April 17, 2014 @

2. Amendment of Schedule 1

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA. 20/2000-RB dated 3rd May 2000), in Annex B,

a). in the heading, for the words and figures, "% of Cap/Equity", the words and figures, "% of Equity/FDI Cap" shall be substituted;

b). for the existing entry 1.1. II, the following shall be substituted, namely:

	II. The term 'under controlled conditions' covers the following: (i) '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. (ii) In case of Animal Husbandry, scope of the term 'under controlled conditions' covers – (a) 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 as prescribed by the National Livestock Policy 2013 and in conformity with the existing 'Standard Operating Practices and Minimum Standard Protocol." (b) Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc. (iii) In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers – (a) Aquariums (b) Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control. (iv) In the case of apiculture, scope of the term ''under controlled conditions' covers – 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.

c) in the existing entry 6.1, the following shall be added:

	Note : (i) Investment by Foreign Portfolio Investors (FPIs)/ FIIs (through portfolio investment) is not permitted. (ii) FPI/FII (through portfolio investment) in companies holding defence licence as on 22 August 2013 will remain capped at the level existing as on the said date. No fresh FPI/FII (through portfolio investment) is permitted even if the level of such investment fall below the capped level subsequently.

d) in the existing entry 6.2, clause (xv) shall be deleted and the clauses (xvi), (xvii), (xviii) , (xix) and (xx) shall be renumbered as (xv), (xvi), (xvii), (xviii) and (xix) respectively.

6.2	**Other conditions**:
	(xv) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of the Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs. (xvi) Applications for FDI up to 26% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by Cabinet Committee on Economic Affairs (CCEA). Applications seeking permission of the Government for FDI beyond 26%, will in all cases be examined additionally by the Department of Defence Production (DoDP) from the point of view particularly of access to modern and 'state-of-art' technology. (xvii) Based on the recommendation of the DoDP and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the DoDP in respect of cases which are likely to result in access to modern and 'state-of-art' technology in the country. (xviii) Proposals for FDI beyond 26% with proposed inflow in excess of Rs. 1200 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee of Economic Affairs (CCEA). (xix) 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.

e). for the existing entry 7.5, the following shall be substituted, namely:

7.5	The foreign investment (FI) limit in companies engaged in the afore stated activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Foreign Portfolio Investors(FPIs), Qualified Foreign Investors (QFIs),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.

f). in the existing entry 7.6, for the clauses (iv), (vi), (xvi) and (xviii), the following shall be substituted, namely:

	(iv) The Company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 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. (vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel being 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. (xiv) The inspection will ordinarily be carried out by the Government of India, Ministry of Information & Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection. (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 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.

g) for the existing entry 9.3.1(c), the following shall be substituted, namely:

9.3.1	(c) Foreign airlines are also, 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: (i) It would be made under the Government approval route. (ii) The 49% limit will subsume FDI and FII/FPI investment. (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. (iv) A Scheduled Operator's Permit can be granted only to a company: *a) that is registered and has its principal place of business within India;* *b) the Chairman and at least two-thirds of the Directors of which are citizens of India; and* *c) the substantial ownership and effective control of which is vested in Indian nationals.* (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 (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. **Note**: (i) 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. (ii) The dispensation for NRIs regarding FDI up to 100% will also continue in respect of the investment regime specified at paragraph 9.3.1(c)(ii) above. (iii) The policy mentioned at paragraph 9.3.1(c) above is not applicable to M/s Air India Limited

h). the existing entry 9.3.1 (d) shall be deleted

i) for the existing entries 15 and 15.1, the following shall be substituted, namely:

15	**Telecom services** **(including Telecom Infrastructure Providers Category-I)** All telecom services including Telecom Infrastructure Providers Category-I, viz.	100%	Automatic upto 49% Government route

	Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex / UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.		beyond 49%
15.1.1	**Other condition**:		
	FDI up to 100% with 49% on the automatic route and beyond 49% on the government route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, expect "Other Service Providers", which are allowed 100% FDI on the automatic route.		

j) the existing entry 16.3 shall be deleted.

k) for the existing entries 16.4 and 16.4(3), the following shall be substituted respectively, namely:

16.4	**Single Brand product retail trading**	100%	Automatic up to 49%. Government route beyond 49%
	(3) Applications seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications 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. In case of FDI upto 49%, the list of products/ product		

	categories proposed to be sold except food products would be provided to the RBI.

l). for the existing entries 17.1 and 17.2, the following shall be substituted, namely:

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).	100% of paid-up capital of ARC (FDI + FII/FPI)	Automatic up to 49% Government route beyond 49%
17.2	**Other conditions:**		
	(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank, up to 49% on the automatic route, and beyond 49% on the Government route. (ii) No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII/FPI controlled by the single sponsor. (iii) The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital. (iv) FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs/FPIs can invest up to 74 per cent of each tranche of scheme of SRs. Such investment should be within the FII/FPI limit on corporate bonds prescribed from time to time, and sectoral caps under extant FDI Regulations should also be complied with. (v) All investments would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.		

m). for the existing entries 18.2(4)(i), 18.2(4)(i)(a) and 18.2(4)(i)(a)(d), the following respectively substituted, namely:

18.2	**Other conditions:**
	(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs/FPIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDRs/ADRs and acquisition of shares from existing shareholders. (4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs/FPIs and NRIs will be as follows:

	(i) In the case of FIIs/FPIs, as hitherto, individual FII/FPI holding is restricted to below 10 per cent of the total paid-up capital, aggregate limit for all FIIs/FPIs/QFIs 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. (a) Thus, the FII/FPI/QFI investment limit will continue to be within 49 per cent of the total paid-up capital. (d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per Regulation 14(5) as applicable.

n). for the existing entries 20.2 and 20.3(iii), the following shall be substituted respectively, namely:

20.2	**Commodity Exchange**	49% (FDI & FII/FPI) [Investment by Registered FII /FPI under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Automatic
20.3	**Other conditions:**		
	(iii) Foreign investment in commodity exchanges will be subject to the guidelines of the Central Government / Forward Markets Commission (FMC).		

o). for the existing entries 21.2(2) and 21.2(4)(a), the following shall be substituted respectively, namely:

21.2	**Other Conditions:**
	(2) Foreign investment is permitted subject to regulatory clearance from RBI. (4) Such FII/FPI investment would be permitted subject to the conditions that:

	(a) A single entity should directly or indirectly hold below 10% equity.

p). the note under existing entry 25.2 shall be deleted

q). for the existing entry 25.3, the following shall be substituted, namely:

25.3	**Other Conditions**		
	(i) ‘Non-compete’ clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board. (ii) The prospective investor and the prospective investee are required to provide necessary certificate along with the FIPB application. (iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.		

(B P Kanungo)
Principal Chief General Manager

Foot Note:-

(i) @It is clarified that no person will be adversely affected as a result of the retrospective effect being given to these Regulations.

(ii) The Principal Regulations were published in the Official Gazette vide G.S.R. No.406 (E) dated May 8, 2000 in Part II, Section 3, sub-Section (i) and subsequently amended as under:-

G.S.R.No. 158(E) dated 02.03.2001
G.S.R.No. 175(E) dated 13.03.2001
G.S.R.No. 182(E) dated 14.03.2001
G.S.R.No. 4(E) dated 02.01.2002
G.S.R.No. 574(E) dated 19.08.2002
G.S.R.No. 223(E) dated 18.03.2003
G.S.R.No. 225(E) dated 18.03.2003
G.S.R.No. 558(E) dated 22.07.2003
G.S.R.No. 835(E) dated 23.10.2003
G.S.R.No. 899(E) dated 22.11.2003
G.S.R.No. 12(E) dated 07.01.2004
G.S.R.No. 278(E) dated 23.04.2004
G.S.R.No. 454(E) dated 16.07.2004
G.S.R.No. 625(E) dated 21.09.2004
G.S.R.No. 799(E) dated 08.12.2004
G.S.R.No. 201(E) dated 01.04.2005
G.S.R.No. 202(E) dated 01.04.2005
G.S.R.No. 504(E) dated 25.07.2005
G.S.R.No. 505(E) dated 25.07.2005
G.S.R.No. 513(E) dated 29.07.2005
G.S.R.No. 738(E) dated 22.12.2005
G.S.R.No. 29(E) dated 19.01.2006

G.S.R.No. 413(E) dated 11.07.2006
G.S.R.No. 712(E) dated 14.11.2007
G.S.R.No. 713(E) dated 14.11.2007
G.S.R.No. 737(E) dated 29.11.2007
G.S.R.No. 575(E) dated 05.08.2008
G.S.R.No. 896(E) dated 30.12.2008
G.S.R.No. 851(E) dated 01.12.2009
G.S.R.No. 341 (E) dated 21.04.2010
G.S.R.No. 821 (E) dated 10.11.2012
G.S.R.No. 606(E) dated 03.08.2012
G.S.R.No. 795(E) dated 30.10.2012
G.S.R.No. 796(E) dated 30.10.2012
G.S.R. No. 797(E) dated 30.10.2012
G.S.R.No. 945 (E) dated 31.12.2012
G.S.R. No.946(E) dated 31.12.2012
G.S.R. No.38(E) dated 22.01.2013
G.S.R.No.515(E) dated 30.07.2013
G S.R.No.532(E) dated 05.08.2013
G.S.R. No.341(E) dated 28.05.2013
G.S.R.No.344(E) dated 29.05.2013
G.S.R. No.195(E) dated 01.04.2013
G.S.R.No.393(E) dated 21.06.2013
G.S.R.No.591(E) dated 04.09.2013
G.S.R.No.596(E) dated 06.09.2013
G.S.R.No.597(E) dated 06.09.2013
G.S.R.No.681(E) dated 11.10.2013
G.S.R.No.682(E) dated 11.10.2013
G.S.R. No818(E) dated 31.12.2013
G.S.R. No805(E) dated 30.12.2013
G.S.R.No.683(E) dated 11.10.2013
G.S.R.No.189(E) dated 19.03.2014
G.S.R.No.190(E) dated 19.03.2014
G.S.R.No.270(E) dated 07.04.2014
G.S.R.No. 361 (E) dated 27.05.2014
G.S.R.No.370(E) dated 30.05.2014
G.S.R.No.371(E) dated 30.05.2014
G.S.R.No. 400 (E) dated 12.06.2014

Published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) dated 13.11.2014- G.S.R.No.798(E)