Department of Industrial Policy and Promotion

Ministry of Commerce and Industry

Government of India

Consolidated FDI Policy

(Effective from April 17, 2014)

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
(FC Section)

Consolidated FDI Policy Circular of 2014

Subject: Consolidated FDI Policy.

The "Consolidated FDI Policy" is attached.

2. This circular will take effect from April 17, 2014.

(Anjali Prasad)
Additional Secretary to the Government of India

D/o IPP F. No. 5(1)/2014-FC.I Dated the 17.04.2014

Copy forwarded to:

1. Press Information Officer, Press Information Bureau- for giving wide publicity to the above circular.
2. NIC, DIPP for uploading the circular on DIPP's website.
3. Department of Economic Affairs, Ministry of Finance, New Delhi.
4. Reserve Bank of India, Mumbai.
5. Hindi Section for Hindi Translation.

Index

Annexures

Chapter 1: Intent and Objective

1.1 Intent and Objective

1.1.1 It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Foreign Direct Investment, as distinguished from portfolio investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

1.1.2 The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. The procedural instructions are issued by the Reserve Bank of India vide A.P. (DIR Series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.3 The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on April 16, 2014 and reflects the FDI Policy as on April 17, 2014. This Circular accordingly will take effect from April 17, 2014 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

1.1.4 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to April 17, 2014, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

Chapter 2: Definitions

2.1 Definitions

2.1.1 **'AD Category-I Bank'** means a bank (Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.

2.1.2 **'Authorized Bank'** means a bank including a co-operative bank (other than an authorized dealer) authorized by the Reserve Bank to maintain an account of a person resident outside India.

2.1.3 **'Authorized Dealer'** means a person authorized as an authorized dealer under sub-section (1) of section 10 of FEMA.

2.1.4 **'Authorized Person'** means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under sub-section (a) of section 10 of FEMA to deal in foreign exchange or foreign securities.

2.1.5 **'Capital'** means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.

Note: Warrants and partly paid shares can be issued to person/(s) resident outside India only after approval through the Government route[1].

2.1.6 **'Capital account transaction'** means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 of FEMA.

2.1.7 **'Control'** shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

2.1.8 **'Depository Receipt'** (DR) means a negotiable security 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, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded

[1] Review of FDI policy to include warrants and partly-paid shares is under consideration of the Government.

anywhere/elsewhere are known as Global Depository Receipts (GDRs).

2.1.9 **'Erstwhile Overseas Corporate Body'** (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

2.1.10 **'Foreign Currency Convertible Bond'** (FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

2.1.11 **'FDI'** means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Original notification is available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174 Subsequent amendment notifications are available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx).

2.1.12 **'FEMA'** means the Foreign Exchange Management Act, 1999 (42 of 1999) (http://finmin.nic.in/law/index.asp).

2.1.13 **'FIPB'** means the Foreign Investment Promotion Board constituted by the Government of India.

2.1.14 **'Foreign Institutional Investor'**(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations 1995.

2.1.15 **'Foreign Portfolio Investor'**(FPI)[2] means a person registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

2.1.16 **'Foreign Venture Capital Investor'** (FVCI) means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 {SEBI(FVCI) Regulations} and proposes to make investment in accordance with these Regulations.

2.1.17 **'Government route'** means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).

2.1.18 **'Group Company'** means two or more enterprises which, directly or indirectly, are in a position to:

(i) exercise twenty-six percent or more of voting rights in other enterprise; or

(ii) appoint more than fifty percent of members of board of directors in the other enterprise.

2.1.19 **'Holding Company'** would have the same meaning as defined in Companies Act, 1956.

2.1.20 **'Indian Company'** means a company incorporated in India under the Companies Act, 1956.

2.1.21 **'Indian Venture Capital Undertaking'** (IVCU) means an Indian company:

(i) whose shares are not listed in a recognised stock exchange in India;

(ii) which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.

2.1.22 **'Investing Company'** means an Indian Company holding only investments in other Indian company/(ies), directly or indirectly, other than for trading of such holdings/securities.

---

[2] For details please refer to SEBI (FPI) Regulations, 2014 and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014 notified vide Notification No. FEMA.297/2014-RB dated March 13, 2014 and A.P. (DIR Series) Circular No.112 dated March 25, 2014. Wherever the words or acronyms FPI, FII or QFI occur in this document, the meaning and implications must be according to the above Regulations/Notifications, particularly during the transition period as prescribed in these Regulations.

2.1.23 **'Investment on repatriable basis'** means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India and the expression 'investment on non-repatriable basis' shall be construed accordingly.

2.1.24 **'Joint Venture'** (JV) means an Indian entity incorporated in accordance with the laws and regulations in India in whose capital a non-resident entity makes an investment.

2.1.25 **'Limited Liability Partnership'** means a Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.

2.1.26 **'Non-resident entity'** means a 'person resident outside India' as defined under FEMA.

2.1.27 **'Non-Resident Indian'** (NRI) means an individual resident outside India who is a citizen of India or is a person of Indian origin.

2.1.28 A company is considered as **'Owned'** by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;

2.1.29 **'Person'** includes-

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office, or branch owned or controlled by such person.

2.1.30 **'Person of Indian Origin'** (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

(i) he at any time held Indian Passport; or

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

(iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

2.1.31 **'Person resident in India'** means-

(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.

2.1.32 **'Person resident outside India'** means a person who is not a Person resident in India.

2.1.33 **'Portfolio Investment Scheme'** means the Portfolio Investment Scheme referred to in Schedules 2, 2A & 3 of FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

2.1.34 **'A Qualified Foreign Investor'** (QFI) means a non-resident investor (other than SEBI registered FII and SEBI registered FVCI) who meets the KYC requirements of SEBI for the purpose of making investments in accordance with the regulations/orders/circulars of RBI/SEBI.

2.1.35 **'RBI'** means the Reserve Bank of India established under the Reserve Bank of India Act, 1934.

2.1.36 **'Resident Entity'** means 'Person resident in India' excluding an individual.

2.1.37 **'Resident Indian Citizen'** shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.

2.1.38 **'SEBI'** means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.

2.1.39 **'SEZ'** means a Special Economic Zone as defined in Special Economic Zone Act, 2005.

2.1.40 **'SIA'** means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.

2.1.41 **'Transferable Development Rights'** (TDR) means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

2.1.42 **'Venture Capital Fund'** (VCF) means a Fund established in the form of a trust, a company including a body corporate and registered under Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996, which

(i) has a dedicated pool of capital;

(ii) raised in the manner specified under the Regulations; and

(iii) invests in accordance with the Regulations.

Chapter 3: General Conditions on FDI

3.1 Who Can Invest in India?

3.1.1 A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy and sectors/activities prohibited for foreign investment.

3.1.2 NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies 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.

3.1.3 OCBs have been derecognized as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route.

3.1.4 (i) An FII/FPI may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI/QFI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI/QFI investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.

(ii) An Indian company which has issued shares to FIIs/FPIs under the FDI Policy for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR **(Annex-1)**.

(iii) A daily statement in respect of all transactions (except derivative trade) has to be submitted by the custodian bank in floppy/soft copy in the prescribed format directly to RBI and also uploaded directly on the OFRS web site (https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp).

3.1.5 Only registered FIIs/FPIs and NRIs as per Schedules 2, 2A and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.

3.1.6 A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian Venture Capital Undertaking (IVCU) and may also set up a domestic asset management company to manage the fund. All such investments can be made under the automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations.

Further, FVCIs are allowed to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes/funds set up by a VCF) by way of private arrangement/purchase from a third party also, subject to terms and conditions as stipulated in Schedule 6 of Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time. It is also being clarified that SEBI registered 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, as well as the terms and conditions stipulated therein.

3.1.7 **Qualified Foreign Investors (QFls) investment in equity shares:**

3.1.7.1 QFls are permitted to invest through SEBI registered Depository Participants (DPs) only in equity shares of listed Indian companies through recognized 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. QFls are also permitted to acquire equity shares by way of right 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 prescribed investment limits. QFIs are allowed to sell the equity shares so acquired subject to the relevant SEBI guidelines.

3.1.7.2 The individual and aggregate investment limits for the QFls shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be within

FPI aggregate limits. 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.

3.1.7.3 Dividend payments on equity shares held by QFls can either be directly remitted to the designated overseas bank accounts of the QFIs or credited to the single non-interest bearing Rupee account.

3.2 Entities into which FDI can be made

3.2.1 **FDI in an Indian Company:** Indian companies can issue capital against FDI.

3.2.2 **FDI in Partnership Firm/Proprietary Concern:**

(i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;

(a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.

(b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.

(c) Amount invested shall not be eligible for repatriation outside India.

(ii) Investments with repatriation option: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

(iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment in 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.

(iv) Restrictions: 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 or print media.

3.2.3 **FDI in Venture Capital Fund (VCF)**: FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs)/Venture Capital Funds (VCFs)/other companies, as stated in paragraph 3.1.6 of this Circular. If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF subject to approval of the FIPB. However, if a domestic VCF is set-up as an incorporated company under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms, etc.

3.2.4 **FDI in Trusts:** FDI in Trusts other than VCF is not permitted.

3.2.5 **FDI in Limited Liability Partnerships (LLPs)**: FDI in LLPs is permitted, subject to the following conditions:

(a) FDI will be allowed, through the Government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).

(b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

(c) An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

(d) LLPs with FDI will not be eligible to make any downstream investments.

(e) Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.

(f) Investment in LLPs by Foreign Portfolio Investors (FPIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).

(g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.

(h) For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

(i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except clause 3.2.5(e) which would be optional in case of a company) are met and with the prior approval of FIPB/Government.

3.2.6 **FDI in other Entities:** FDI in resident entities other than those mentioned above is not permitted.

3.3 Types of Instruments

3.3.1 Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations. The price/conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations [the DCF method of valuation for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies].

3.3.1.1 Equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares without any option/right to exit at an assured price shall be reckoned as eligible capital instruments.

3.3.1.2 Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares under FDI scheme, subject to the following conditions:

(a) There is a minimum lock-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher (e.g. defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period shall be effective from the date of allotment of such capital instruments or as prescribed under the FDI Policy, e.g for defence and construction development sectors, etc.

(b) After the lock-in period, as applicable above, and subject to FDI Policy provisions, if any, in this regard, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.

3.3.2 Other types of Preference shares/Debentures i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECBs relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of London Interbank Offered Rate (LIBOR) plus the spread as permissible for ECBs of corresponding maturity.

3.3.3 The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.

3.3.4 **Issue of shares by Indian Companies under FCCB/ADR/GDR**

(i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR (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 there under from time to time.

(ii) A company can issue ADRs/GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy. 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 shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period of two years w.e.f 11th October, 2013, subject to the following conditions:

(a) Unlisted companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those with which SEBI has signed bilateral agreements;

(b) The Companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;

(c) While raising resources abroad, the listing company shall be fully compliant with the FDI policy in force;

(d) The capital raised abroad may be utilized for retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions;

(e) In case the funds raised are not utilized abroad as stipulated at (d) above, such companies shall remit the money back to India within 15 days from the date of raising of funds and such money shall be parked only in AD Category-1 banks recognized by RBI and may be used domestically;

(f) The ADRs/GDRs shall be issued subject to sectoral cap, entry route, minimum capitalization norms, pricing norms, etc. as applicable as per FDI regulations notified from time to time;

(g) The pricing of such ADRs/GDRs to be issued to a person resident outside India shall be determined in accordance with sub-paragraph 3.3.4 (viii) below;

(h) The number of underlying equity shares offered for issuance of ADRs/GDRs to be kept with the local custodian shall be determined upfront and ratio of ADRs/GDRs to equity shares shall be decided upfront based on applicable FDI pricing norms of equity shares of unlisted company;

(i) The unlisted Indian company shall comply with the instructions on downstream investment as notified from time to time;

(j) The criteria of eligibility of unlisted company raising funds through ADRs/GDRs shall be as prescribed by Government of India;

(iv) 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.

(v) The ADR/GDR proceeds can be utilized 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.

(vi) 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 from time to time, as applicable to all shareholders exercising voting rights.

(vii) Erstwhile OCBs who are not eligible to invest in India and entities prohibited from buying, selling or dealing in securities by SEBI will not be eligible to subscribe to ADRs/ GDRs issued by Indian companies.

(viii) The pricing of ADR/GDR issues 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.

(ix) The pricing of sponsored ADRs/GDRs would be 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.

3.3.5 (i) **Two-way Fungibility Scheme:** 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 ADRs/GDRs would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the Indian market.

(ii) **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 are 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.

3.4 Issue/Transfer of Shares

3.4.1 The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the capital 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) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

3.4.2 **Issue price of shares** – Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than -

a. the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company are listed on any recognised stock exchange in India;

b. the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company are not listed on any recognised stock exchange in India; and

c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

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.

3.4.3 **Foreign Currency Account** – Indian companies which are eligible to issue shares to persons resident outside India under the FDI Policy may be allowed to retain the share subscription amount in a Foreign Currency Account, with the prior approval of RBI.

3.4.4 **Transfer of shares and convertible debentures** –

(i) Subject to FDI sectoral policy (relating to sectoral caps and entry routes), applicable laws and other conditionalities including security conditions, non-resident 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 subject to the following:

(a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).

(b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

(c) A person resident outside India can transfer any security to a person resident in India by way of gift.

(d) 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.

(e) 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 guidelines given in para 3.4.5.2 and **Annex-2**.

(f) 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, subject to the guidelines given in para 3.4.5.2 and **Annex-2**.

(g) 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, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company.

(h) 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.

(ii) 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 Know Your Customer (KYC) check 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.

(iii) A person resident outside India including a Non-Resident Indian investor who has already acquired and continues to hold the control in accordance with the SEBI (Substantial Acquisition of Shares and Takeover) Regulations can acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme provided that the original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, mode of payment, reporting requirement, documentation, etc.

(iv) **Escrow:** AD Category-I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers/exit offers and delisting of shares. The relevant SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST) Regulations or any other applicable SEBI Regulations/provisions of the Companies Act, 1956 will be applicable. AD Category-I banks have also been permitted to open and maintain, without prior approval of RBI, **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions specified by RBI. SEBI authorised Depository Participants have also been permitted to open and maintain, without prior approval of RBI, Escrow accounts for securities subject to the terms and conditions as specified by RBI. In both cases, the Escrow agent shall necessarily be an AD Category-I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from/to the non- residents.

3.4.5 **Prior permission of RBI in certain cases for transfer of capital instruments**

3.4.5.1 Except cases mentioned in paragraph 3.4.5.2 below, the following cases require prior approval of RBI:

(i) Transfer of capital instruments from resident to non-residents by way of sale where :

(a) Transfer is at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time and the transaction does not fall under the exception given in para 3.4.5.2.

(b) Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category-I bank for necessary due diligence, within 60 days from the date of receipt of the full and final amount of consideration.

(ii) Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents mentioned in **Annex-3** should be enclosed. Reserve Bank considers the following factors while processing such applications:

(a) The proposed transferee (donee) is eligible to hold such capital instruments 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.

(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-4**.

(e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 during the financial year.

(f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

(iii) Transfer of shares from NRI to non-resident.

3.4.5.2 In the following cases, approval of RBI is not required:

A. Transfer of shares from a Non-Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that:

i. The original and resultant investment are in line 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 the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST, buy back); and

iii. Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

B. Transfer of shares from Resident to Non-Resident:

i) where the transfer of shares requires the prior approval of the Government conveyed through FIPB as per the extant FDI policy provided that:

a) the requisite approval of the FIPB has been obtained; and

b) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

ii) **where the transfer of shares attract SEBI (SAST) Regulations** subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.

iii) **where the transfer of shares does not meet the pricing guidelines under the FEMA, 1999 provided that:**

a) 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.;

b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST); and

c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

iv) **where the investee company is in the financial sector provided that :**

a) Any 'fit and proper/due diligence' requirements as regards the non-resident investor as stipulated by the respective financial sector regulator, from time to time, have been complied with; and

b) The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, pricing, etc.), reporting requirements, documentation etc., are complied with.

3.4.6 **Conversion of ECB/Lump sum Fee/Royalty etc. into Equity**

(i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements:

(a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government 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 as per the provision of para 3.4.2 above;

(d) Compliance with the requirements prescribed under any other statute and regulation in force; and

(e) The conversion facility is available for ECBs availed under the Automatic or Government 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 due for payment, subject to entry route, sectoral cap and pricing guidelines (as per the provision of para 3.4.2 above) and compliance with applicable tax laws.

(iii) Issue of equity shares under the FDI policy is allowed under the Government route for the following:

(I) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the following conditions:

(a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.

(b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.

(c) 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.

(II) pre-operative/pre-incorporation expenses (including payments of rent etc.), 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 should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.

(d) The applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company

General conditions:

(i) All requests for conversion should be accompanied by a special resolution of the company.

(ii) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

3.5 Specific Conditions in Certain Cases

3.5.1 **Issue of Rights/Bonus Shares** – FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The offer on right basis to the persons resident outside India shall be:

(a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

(b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

3.5.2 **Prior permission of RBI for Rights issue to erstwhile OCBs-** OCBs have been de-recognised as a class of investors from September 16, 2003. Therefore companies desiring to issue rights share to such erstwhile OCBs will have to take specific prior permission from RBI. As such, entitlement of rights share is not automatically available to erstwhile OCBs. However bonus shares can be issued to erstwhile OCBs without the approval of RBI.

3.5.3 **Additional allocation of rights share by residents to non-residents –** Existing non-resident shareholders are allowed to apply for issue of additional shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share 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.

3.5.4 **Acquisition of shares under Scheme of Merger/Demerger/Amalgamation** Mergers/demergers/ 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/demerger/amalgamation. Once the scheme of merger or demerger 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.

3.5.4.1 **Issue of Non convertible/redeemable bonus preference shares or debentures**

Indian companies are allowed to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.

3.5.5 **Issue of shares under Employees Stock Option Scheme (ESOPs) –**

(i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (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. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

(a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and

(b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

(ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.

(iii) The issuing company is required to report (plain paper reporting) the details of granting of stock options under the scheme to non-resident employees to the Regional Office concerned of the Reserve Bank and thereafter the details of issue of shares subsequent to the exercise of such stock options within 30 days from the date of issue of shares in Form FC-GPR.

3.5.6 **Share Swap**: In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Government conveyed through Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.

3.5.7 **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:

a) the period of such pledge shall be co-terminus with the maturity of the underlying ECB;

b) in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;

c) 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-residents 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-residents 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.

3.6 Entry Routes for Investment:

3.6.1 Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by FIPB.

3.6.2 **Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors with caps:**

In sectors/activities with caps, including *inter-alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.

(v) It is clarified that these guidelines will not apply to sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

(vi) It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

3.7 Caps on Investments

3.7.1 Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. The caps in various sector(s) are detailed in Chapter 6 of this circular.

3.8 Entry Conditions on Investment

3.8.1 Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 6 of this circular.

3.9 Other Conditions on Investment Besides Entry Conditions

3.9.1 Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

3.10 Foreign Investment into/downstream Investment by Indian Companies

3.10.1 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Paragraph 4.1.

3.10.2 For the purpose of this chapter,

(i) 'Downstream investment' means indirect foreign investment, by one Indian company, into another Indian company, by way of subscription or acquisition, in terms of Paragraph 4.1. Paragraph 4.1.3 provides the guidelines for calculation of indirect foreign investment, with conditions specified in paragraph 4.1.3 (v).

(ii) 'Foreign Investment' would have the same meaning as in Paragraph 4.1

3.10.3 **Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies (regardless of its ownership or control):**

3.10.3.1 Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in paragraph 6.2.17.8 of this Circular.

3.10.3.2 Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

3.10.3.3 For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Note: Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

3.10.4 **Downstream investment by an Indian company which is not owned and/or controlled by resident entity/ies:**

3.10.4.1 Downstream investment by an Indian company, which is not owned and/or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

Note: Downstream investment/s made by a banking company, as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, incorporated in India, which is owned and/or controlled by non-residents/a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

3.10.4.2 Downstream investments by Indian companies will be subject to the following conditions:

(i) Such a company is to notify SIA, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) Downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a shareholders agreement, if any;

(iii) Issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

(iv) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.10.3 and 3.10.4.1.

Chapter 4: Calculation of Foreign Investment

4.1 Total Foreign Investment i.e. Direct and Indirect Foreign Investment in Indian Companies

4.1.1 Investment in Indian companies can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment i.e. through multi-layered structure.

4.1.2 For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments i.e. FDI; investment by FIIs (holding as on March 31); FPIs (holding as on March 31); QFIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

4.1.3 **Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in an Indian company.**

(i) **Counting the Direct Foreign Investment:** All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.

(ii) **Counting of indirect foreign Investment:**

(a) The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens .

(b) For cases where condition (a) above is not satisfied or if the investing company is owned **or** controlled by 'non-resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment, provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

Illustration

To illustrate, if the indirect foreign investment is being calculated for Company X which has investment through an investing Company Y having foreign investment, the following would be the method of calculation:

(A) where Company Y has foreign investment less than 50%- Company X would not be taken as having any indirect foreign investment through Company Y.

(B) where Company Y has foreign investment of say 75% and:

(I) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X;

(II) invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%;

(III) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company X would be computed in the ratio of 75:25 in the total investment of Company Y in Company X.

(iii) The total foreign investment would be the sum total of direct and indirect foreign investment.

(iv) The above methodology of calculation would apply at every stage of investment in Indian companies and thus to each and every Indian company.

(v) **Additional conditions:**

(a) The full details about the foreign investment including ownership details etc. in Indian company(s) and information about the control of the company(s) would be furnished by the Company(s) to the Government of India at the time of seeking approval.

(b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst shareholders which have an effect on the appointment of the

Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such *inter-se* agreements for determining ownership and control when considering the case for approval of foreign investment.

(c) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.

(d) In the I& B and Defence sectors where the sectoral cap is less than 49%, the company would need to be 'owned **and** controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

(A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following:

(I) In the case of an individual shareholder,

(aa) The individual shareholder,

(bb) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(cc) A company/group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(II) In the case of an Indian company,

(aa) The Indian company

(bb) A group of Indian companies under the same management and ownership control.

(B) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

(C) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (I) and (II) of clause 4.1.3(v)(d)(A) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

(e) If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non-resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

4.1.4 The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the Insurance Sector which will continue to be governed by the relevant Regulation.

4.1.5 Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 (date of issue of Press Note 2 of 2009) would not require any modification to conform to these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

Chapter 5: Foreign Investment Promotion Board (FIPB)

5.1 Constitution of FIPB

5.1.1 FIPB comprises of the following Secretaries to the Government of India:

(i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson

(ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry

(iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry

(iv) Secretary to Government, Economic Relations, Ministry of External Affairs

(v) Secretary to Government, Ministry of Overseas Indian Affairs.

5.1.2 The Board would be able to co-opt other Secretaries to the Central Government and top officials of financial institutions, banks and professional experts of Industry and Commerce, as and when necessary.

5.2 Levels of Approvals for Cases under Government Route

5.2.1 The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.1200 crore.

5.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).

5.2.3 The CCEA would also consider the proposals which may be referred to it by the FIPB/the Minister of Finance (in-charge of FIPB).

5.3 Cases Which do not Require Fresh Approval

5.3.1 Companies may not require fresh prior approval of the Government i.e. Minister in-charge of FIPB/CCEA for bringing in additional foreign investment into the same entity, in the following cases:

(i) Entities the activities of which had earlier required prior approval of FIPB/CCFI/CCEA and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;

(ii) Entities the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps; and

(iii) Additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose.

5.4 Online Filing of Applications for FIPB/Government's Approval

5.4.1 Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at FIPB's website (http://finmin.nic.in/) and (http://www.fipbindia.com).

Chapter 6: Sector Specific Conditions on FDI

6.1 Prohibited Sectors:

FDI is prohibited in:

(a) Lottery Business including Government/private lottery, online lotteries, etc.

(b) Gambling and Betting including casinos etc.

(c) 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).

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.

6.2 Permitted Sectors

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 up to 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.

<table>
<tr><th>Sl. No.</th><th>Sector/Activity</th><th>% of Equity/ FDI Cap</th><th>Entry Route</th></tr>
<tr><td colspan="4">Agriculture</td></tr>
<tr><td>6.2.1</td><td colspan="3">Agriculture & Animal Husbandry</td></tr>
<tr><td></td><td>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
Note: Besides the above, FDI is not allowed in any other agricultural sector/activity</td><td>100%</td><td>Automatic</td></tr>
<tr><td>6.2.1.1</td><td colspan="3">Other Conditions:</td></tr>
<tr><td></td><td colspan="3">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.
(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).
(v) Import of materials shall be in accordance with National Seeds Policy.</td></tr>
</table>

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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 – (a) 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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.2	**Tea Plantation**		
6.2.2.1	Tea sector including tea plantations	100%	Government
	Note: Besides the above, FDI is not allowed in any other plantation sector/activity.		
6.2.2.2	**Other Condition**:		
	Prior approval of the State Government concerned is required in case of any future land use change.		
Mining and Petroleum & Natural Gas			
6.2.3	**Mining**		
6.2.3.1	**Mining and Exploration of metal and non-metal ores** including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; **subject to** the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
6.2.3.2	**Coal and Lignite**		
	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and **subject to** 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

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.3.3	**Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities**		
6.2.3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities **subject to** sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).	100%	Government
6.2.3.3.2	**Other Conditions**:		
	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 6th 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 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”. (i) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.: (A) value addition facilities are set up within India along with transfer of technology; (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		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987. (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. **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. (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.		
6.2.4	**Petroleum & Natural Gas**		
6.2.4.1	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 Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.4.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
	Manufacturing		
6.2.5	**Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)**		
6.2.5.1	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.		
6.2.6	**Defence**		
6.2.6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	26%	Government route up to 26% Above 26% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.
	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 (date of issue of Press Note 6 of 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 falls below the capped level subsequently.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.6.2	**Other Conditions**:		
	(i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence. (ii) The applicant should be an Indian company/partnership firm. (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. (iv) Full particulars of the Directors and the Chief Executives should be furnished along with the applications. (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 & D base. (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. (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 & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the Government. (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. (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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(x) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted. (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. (xii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the 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. (xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises. (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. (xv) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(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 on 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.		
Services Sector			
Information Services			
6.2.7	**Broadcasting**		
6.2.7.1	**Broadcasting Carriage Services**		
6.2.7.1.1	(1) **Teleports** (setting up of up-linking HUBs/Teleports); (2) **Direct to Home** (DTH); (3) **Cable Networks** (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) **Mobile TV;** (5) **Headend-in-the Sky Broadcasting Service**(HITS)	74%	Automatic up to 49% Government route beyond 49% and up to 74%

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.7.1.2	**Cable Networks** (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	49%	Automatic
6.2.7.2	**Broadcasting Content Services**		
6.2.7.2.1	**Terrestrial Broadcasting FM (FM Radio),** 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
6.2.7.2.2	**Up-linking of 'News & Current Affairs' TV Channels**	26%	Government
6.2.7.2.3	**Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels**	100%	Government
6.2.7.3	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.		
6.2.7.4	Foreign investment (FI) in companies engaged in all the aforestated 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.		
6.2.7.5	The foreign investment (FI) limit in companies engaged in the aforestated 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.		
6.2.7.6	Foreign investment in the aforestated broadcasting carriage services will be subject to the following security conditions/terms:		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	Mandatory Requirement for Key Executives of the Company (i) The majority of Directors on the Board of the Company shall be Indian citizens. (ii) The Chief Executive Officer (CEO), Chief Officer in-charge of technical network operations and Chief Security Officer should be resident Indian citizens. **Security Clearance of Personnel** (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. 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. 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. (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. **Permission *vis-à-vis* Security Clearance** (v) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	clearance is withdrawn, the permission granted is liable to be terminated forthwith. (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. **Infrastructure/Network/Software related requirement** (vii) The officers/officials of the licensee companies dealing with the lawful interception of services will be resident India citizens. (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. (ix) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant law. (x) The Company must provide traceable identity of their subscribers. **Monitoring, Inspection and Submission of Information** (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. (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. (xiii) The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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. (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. (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. (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. (xvii) The service providers should familiarize/train designated officials or the Government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems. **National Security Conditions** (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. (xix) The company shall not import or utilize any equipment, which are identified		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	as unlawful and/or render network security vulnerable. **Other Conditions** (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. (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.		
6.2.8	**Print Media**		
6.2.8.1	Publishing of newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	Government
6.2.8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	Government
6.2.8.2.1	**Other Conditions:**		
	(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. (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 & Broadcasting on 4.12.2008.		
6.2.8.3	Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, **subject to** 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
6.2.8.4	Publication of facsimile edition of foreign newspapers	100%	Government

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.8.4.1	**Other Conditions:**		
	(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India. (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. (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 Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.		
6.2.9	**Civil Aviation**		
6.2.9.1	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. For the purposes of the Civil Aviation sector: (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; (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; (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; (iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward; (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;		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(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; (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; (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; (x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water; (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.		
6.2.9.2	**Airports**		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic up to 74% Government route beyond 74%
6.2.9.3	**Air Transport Services**		
	(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 up to 49% Government route beyond 49% and up to 74%
	(3)Helicopter services/seaplane services requiring DGCA approval	100%	Automatic

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.9.3.1	**Other Conditions:**		
	(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services. (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. (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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	Note: (i) The FDI limits/entry routes, mentioned at paragraph 6.2.9.3 (1) and 6.2.9.3 (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 para 6.2.9.3.1(c)(ii) above. (iii)The policy mentioned at para 6.2.9.3.1 (c) above is not applicable to M/s Air India Limited.		
6.2.9.4	**Other services under Civil Aviation sector**		
	(1) Ground Handling Services **subject to** sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(2)Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
6.2.10	**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.	100%	Automatic
6.2.11	**Construction Development: Townships, Housing, Built-up infrastructure**		
6.2.11.1	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

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.11.2	Investment will be subject to the following conditions: (1) Minimum area to be developed under each project would be as under: (i) In case of development of serviced housing plots, a minimum land area of 10 hectares (ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts (iii) In case of a combination project, any one of the above two conditions would suffice. (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. (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. (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. (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. (6) The investor/investee company shall be responsible for obtaining all necessary		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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. (7) The State Government/Municipal/Local Body concerned, which approves the building/development plans, would monitor compliance of the above conditions by the developer. **Note:** (i) The conditions at (1) to (4) above would not apply to Hotels & Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old Age Homes and investment by NRIs. (ii) FDI is not allowed in Real Estate Business.		
6.2.12	**Industrial Parks –** new and existing	100%	Automatic
6.2.12.1	(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. (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. (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. (iv) "Allocable area" in the Industrial Park means- (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. (b) in the case of built up space- the floor area and built up space utilized for		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	providing common facilities. (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. (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&D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.		
6.2.12.2	FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 6.2.11 above, provided the Industrial Parks meet with the under-mentioned conditions: (i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area; (ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.		
6.2.13	**Satellites**- establishment and operation		
6.2.13.1	Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government
6.2.14	**Private Security Agencies**	49 %	Government
6.2.15	**Telecom Services** **(including Telecom Infrastructure Providers Category-I)** All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services	100%	Automatic up to 49% Government route beyond 49%

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(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.		
6.2.15.1	**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.		
6.2.16	**Trading**		
6.2.16.1	**Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)**	100%	Automatic
6.2.16.1.1	**Definition**: Cash & 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, imply 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.		
6.2.16.1.2	**Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):** (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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(b) Except in case of sales to Government, sales made by the wholesaler would be considered as ‘cash & carry wholesale trading/wholesale trading’ with valid business customers, only when WT are made to the following entities: (I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or (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 (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 (IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption. **Note: An entity, to whom WT is made, may fulfill any one of the 4 conditions.** (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. (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 (e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations. (f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.16.2	**E-commerce activities**	100%	Automatic
6.2.16.2.1	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.		
6.2.16.3	**Single Brand product retail trading**	100%	Automatic up to 49% Government route beyond 49%
	(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. (2) FDI in Single Brand product retail trading would be subject to the following conditions: (a) Products to be sold should be of a 'Single Brand' only. (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. (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing. (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will 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. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(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. (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. (3) Application 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 up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI. (4) 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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.16.4	**Multi Brand Retail Trading**	51%	Government
	(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions: (i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded. (ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million. (iii) At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years,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 backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements. (iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investmentof US $ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The 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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(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. (vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, 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. (vii) Government will have the first right to procurement of agricultural products. (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 list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the list at (2) below 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.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(2) List of States/Union Territories as mentioned in Paragraph 6.2.16.4(1)(viii) 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh 6. Jammu & Kashmir 7. Karnataka 8. Maharashtra 9. Manipur 10. Rajasthan 11. Uttarakhand 12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)		
Financial Services			
6.2.17	**Financial Services** Foreign investment in other financial services, other than those indicated below, would require prior approval of the Government:		
6.2.17.1	**Asset Reconstruction Companies**		
6.2.17.1.1	'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%
6.2.17.1.2	**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		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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.		
6.2.17.2	**Banking- Private Sector**		
6.2.17.2.1	Banking- Private Sector	74% including investment by FIIs/FPIs	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.17.2.2	**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, GDR/ADRs and acquisition of shares from existing shareholders. (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. (3) The stipulations as above will be applicable to all investments in existing private sector banks also. (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. (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		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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. (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. (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 above as applicable. (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 continue to apply. (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. (ii) Setting up of a subsidiary by foreign banks (a) Foreign banks will be permitted to either have branches or subsidiaries but not both. (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. (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. (d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	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. (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. (f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI. (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. (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.		
6.2.17.3	**Banking- Public Sector**		
6.2.17.3.1	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
6.2.17.4	**Commodity Exchanges**		
6.2.17.4.1	(1) Futures trading in commodities are regulated under the Forward Contracts (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. (2) For the purposes of this chapter, (i)"Commodity Exchange" is a recognized association under the provisions of		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities. (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 (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. (iv)“Forward contract” means a contract for the delivery of goods and which is not a ready delivery contract. (v) “Commodity derivative” means- • a contract for delivery of goods, which is not a ready delivery contract; or • 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.		
6.2.17.4.2	**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
6.2.17.4.3	**Other Conditions:**		
	(1) FII/FPI purchases shall be restricted to secondary market only. (2) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies. (3) Foreign investment in commodity exchanges will be subject to the guidelines of the Central Government/Forward Markets Commission (FMC) from time to time.		
6.2.17.5	**Credit Information Companies (CIC)**		
6.2.17.5.1	Credit Information Companies	74% (FDI+FII/ FPI)	Automatic

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.17.5.2	**Other Conditions:**		
	(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005. (2) Foreign investment is permitted subject to regulatory clearance from RBI. (3) Investment by a registered FII/FPI 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 74% for foreign investment. (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. (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and (c) FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.		
6.2.17.6	**Infrastructure Company in the Securities Market**		
6.2.17.6.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI + FII/FPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital]	Automatic
6.2.17.6.2	**Other Condition:**		
	FII/FPI can invest only through purchases in the secondary market.		
6.2.17.7	**Insurance**		
6.2.17.7.1	(i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors	26% (FDI+FII/FPI+NRI)	Automatic
6.2.17.7.2	**Other Conditions:**		
	(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route. (2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities. (3) The provisions of paragraphs 6.2.17.2.2(4)(i) (c) & (e), relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(4) Indian Insurance Company is defined as a company: (a) which is formed and registered under the Companies Act, 1956; (b) in which the aggregate holdings of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed 26% paid-up equity capital of such Indian insurance company; (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business. (5) As per IRDA (Insurance Brokers) Regulations, 2002, "insurance broker" means a person for the time-being licensed by the Authority under regulation 11, who for remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients. (6) As per IRDA (TPA-Health Services) Regulations, 2001, "TPA" means a Third Party Administrator who, for the time being, is licensed by the Authority, and is engaged, for a fee or remuneration, by whatever name called as may be specified in the agreement with an insurance company, for the provision of health services. (7) Surveyors and Loss Assessors will be governed by the IRDA Insurance Surveyors and Loss Assessors (Licencing, Professional Requirements and Code of Conduct) Regulations, 2000.		
6.2.17.8	**Non-Banking Finance Companies (NBFC)**		
6.2.17.8.1	Foreign investment in NBFC is allowed under the automatic route in only the following activities: (i) Merchant Banking (ii) Under Writing (iii) Portfolio Management Services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodian Services	100%	Automatic

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(x) Factoring (xi) Credit Rating Agencies (xii) Leasing & Finance (xiii) Housing Finance (xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit		
6.2.17.8.2	**Other Conditions:**		
	(1) Investment would be subject to the following minimum capitalisation norms: (i) US $ 0.5 million for foreign capital up to 51% to be brought upfront. (ii) US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront. (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. (iv) 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, therefore, shall not apply to downstream subsidiaries.** (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. (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: 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		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	holding/operating company. **Note:** The following activities would be classified as Non-Fund Based activities: (a) Investment Advisory Services (b) Financial Consultancy (c) Forex Broking (d) Money Changing Business (e) Credit Rating Agencies (vii) This will be subject to compliance with the guidelines of RBI. **Note:** (i) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc. (ii) Leasing & Finance covers only financial leases and not operating leases. (2) The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.		
	Others		
6.2.18	**Pharmaceuticals**		
6.2.18.1	Greenfield	100%	Automatic
6.2.18.2	Brownfield	100%	Government
6.2.18.3	**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 a certificate along with the FIPB application as per **Annex-11**. (iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.		
6.2.19	**Power Exchanges**		
6.2.19.1	Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49% (FDI+FII/FPI)	Automatic
6.2.19.2	**Other Conditions:**		
	(i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII/FPI limit of 23 per cent of the paid-up capital;		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(ii) FII/FPI purchases shall be restricted to secondary market only; (iii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and (iv) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/regulations; security and other conditionalities.		

Chapter 7: Remittance, Reporting and Violation

7.1 Remittance and Repatriation

7.1.1 **Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies**:

(i) Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations, 2000 under FEMA.

(ii) 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.

(iii) **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:

a. No objection or Tax clearance certificate from Income Tax Department for the remittance.

b. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

c. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.

d. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are 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.

7.1.2 **Repatriation of Dividend:** Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange

Management (Current Account Transactions) Rules, 2000, as amended from time to time.

7.1.3 **Repatriation of Interest:** Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

7.2. Reporting of FDI

7.2.1 **Reporting of Inflow**

(i) 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 not later than 30 days from the date of receipt in the Advance Reporting Form enclosed as **Annex-5**.

(ii) 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-6**) 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.

7.2.2 **Reporting of issue of shares**

(i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in **Annex-1**, not later than 30 days from the date of issue of shares.

(ii) Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:

(a) 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 authorized dealers in India evidencing receipt of amount of consideration.

Note: For companies with paid up capital with less than Rs.5 crore, the above mentioned certificate can be given by a practicing company secretary.

(b) 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 Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

(d) Annual return on Foreign Liabilities and Assets **(Annex 7)** should be filed on an annual basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 15th of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information submitted by 15^{th} July will pertain to all the investments made in the previous years up to March 31). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct/portfolio investment may be separately indicated.

(e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation/merger/demerger 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.

7.2.3 **Reporting of transfer of shares**

Reporting of transfer of shares between residents and non-residents and vice- versa is to be done in Form FC-TRS (**Annex 8**). 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. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

7.2.4 **Reporting of Non-Cash**

Details of issue of shares against conversion of ECB have to be reported to the Regional Office concerned of the RBI, as indicated below:

(i) 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.

(ii) 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.

7.2.5 **Reporting of FCCB/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 as **Annex 9**, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the Form enclosed as **Annex 10**, 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.

7.3 Adherence to Guidelines/Orders and Consequences of Violation

FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the FEMA and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. The Directorate takes up investigation in any contravention of FEMA.

7.3.1 **Penalties**

(i) If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/FIPB/Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

(ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means any body corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

(iii) Any Adjudicating Authority adjudging any contraventions under 7.3.1(i), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

7.3.2 **Adjudication and Appeals**

(i) For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

(ii) The Central Government may appoint as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, an Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.

7.3.3 **Compounding Proceedings**

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person. No contravention shall be compounded unless the amount involved in such contravention is quantifiable. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously and not later than 180 days from the date of application made to the Compounding Authority. Compounding Authority shall issue order specifying the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contraventions.

Annex-1

Form 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 / others are issued to the foreign investor, along with the documents mentioned in item No. 5 of the undertaking enclosed to this form. All fields are mandatory) .

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	
Date of issue of shares / convertible debentures/others	

No.	Particulars	(In Block Letters)
1.	Name of the Investee Company	
	Address of the Registered Office of the Investee Company with City, District and State clearly mentioned Telephone Fax e-mail	
	State	
	Registration No. given by Registrar of Companies and Date of Incorporation.	

	Whether existing company or new company (strike off whichever is not applicable)	Existing company / New company (Brownfield) (Greenfield)
	If existing company, give registration number allotted by RBI for FDI, if any	

2.	Description of the main business activity NIC Code	
	Location of the project and NIC code for the district where the project is located a)Detailed address including Name, City, District and State b) Code for District c) Code for State	
	Percentage of FDI allowed as per FDI policy (Sectoral cap under FDI Policy)	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable) (If under approval route, give SIA/FIPB approval No. with date)	Automatic Route / Approval Route

3	**Details of the foreign investor / collaborator[3*] (Details of foreign residence to be given. Indian address if any should not be given)**	
	Name Address Country Constitution / Nature of the investing Entity [Specify whether 1. Individual 2. Company (Please specify if erstwhile OCB) 3. FII 4. FVCI[#] 5. Foreign Trust 6. Private Equity Fund 7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF)[4] 9. Partnership / Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)] Date of incorporation:	

4	**Particulars of Shares / Convertible Debentures /others Issued**
(a)	**Nature and date of issue**

	Nature of issue	*Date of issue*	*Number of shares/ convertible debentures/others*
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		

[*] If there is more than one foreign investor/collaborator, separate Annex may be included for items 3 and 4 of the Form.
2 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.

[#] The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

	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 security*	*Amount of inflow**
	01	Equity						
	02	Compulsorily Convertible Debentures						
	03	Compulsorily Convertible Preference shares						
	04	Others (please specify)						
		Total						

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[@]	
	Total	

[@] *Please specify the nature*

(d)	**Total inflow** (in Rupees) on account of issue of shares / convertible debentures/others to non-residents (including premium, if any) vide (i) Remittance through AD: (ii) Debit to NRE/FCNR/Escrow 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)	**Disclosure of fair value of shares issued****	
	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* **(Please indicate as applicable)*

5. **Post issue pattern of shareholding**								
			Equity			*Compulsorily convertible Preference Shares/ Debentures/others*		
Investor category			No. of shares	Amount (Face Value) Rs.	%	No. of shares	Amount (Face Value) Rs.	%
a)	**Non-Resident**							
	01	**Individuals**						
	02	**Companies**						
	03	**FIIs**						
	04	**FVCIs**[#]						
	05	**Foreign Trusts**						
	06	**Private Equity Funds**						
	07	**Pension/ Provident Funds**						
	08	**Sovereign Wealth Funds**						
	09	**Partnership/ Proprietorship Firms**						
	10	**Financial Institutions**						
	11	**NRIs/PIO**						
	12	**Others (please specify)**						
		Sub Total						
b)	**Resident**							
Total								

[#] The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

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 3rd 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 fulfil 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 3rd 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.

R														

.
.
.

R														

(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 [5] 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:	
Unique Identification Number allotted to the Company at the time of reporting receipt of remittance	

[5] If the company doesn't have full time Company Secretary, a certificate from practicing Company Secretary may be submitted

Annex - 2

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. Pricing Guidelines

2.1 The under noted pricing guidelines are applicable to the following types of transactions:

i. Transfer of shares, by way of sale under private arrangement by a person resident in India to a person resident outside India.

ii. Transfer of shares, by way of sale under private arrangement by a person resident outside India to a person resident in India.

iii. Exit by non-resident investor on exercising option/right in shares or convertible debentures

2.2 Transfer by Resident to Non-resident (i.e. to foreign national, NRI, FII, FPI and incorporated non-resident entity other than erstwhile OCB) Price of shares transferred by way of sale by resident to a non-resident where the shares of an Indian company are:

(a) listed on a recognized stock exchange in India ,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 pf purchase or sale of shares,

(b) not listed on a recognized stock exchange in India ,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 method.

The price per share arrived at should be certified by a SEBI registered Merchant Banker or a Chartered Accountant.

2.3 Transfer by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII, FPI) **to Resident**

Sale of shares by a non-resident to resident shall be in accordance with Regulation 10 B (2) of Notification No. FEMA 20/2000-RB dated May 3, 2000 which 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 at para 2.2 above.

2.4

After the lock-in period, as applicable above, and subject to FDI Policy provisions, if any, in this regard, the non-resident investor exercising option/right in shares or convertible debentures issued under FDI Scheme shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.

3. 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.

4. Method of payment and remittance/credit of sale proceeds

4.1 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 FII,FPI, payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) 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 accounts.

4.2. The sale proceeds of shares (net of taxes) sold by a person resident outside India may be remitted outside India. In case of FII/FPI, 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.

4.3 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.

5. 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:

5.1 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,FPIs) 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, till it gets registered as FPI.

5.2. 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 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 Account.

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

6. Reporting requirements

6.1 Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC-TRS. 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. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Forms and submit a monthly report to the Reserve Bank[6].

For the purpose the Authorized Dealers may designate branches to specifically handle such transactions. These branches could be staffed with adequately trained staff for this purpose to ensure that the transactions are put through smoothly. The ADs may also designate a nodal office to coordinate the work at these branches and also ensure the reporting of these transactions to the Reserve Bank.

[6] To the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

6.2 When the transfer is on private arrangement basis, on settlement of the transactions, 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.

6.3 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.

6.4 In addition the AD 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 in turn submit a consolidated monthly statement in respect of all the transactions reported by their branches together with copies of the FC-TRS Forms received from their branches to Foreign Exchange Department, Reserve Bank, Foreign Investment Division, Central Office, Mumbai in soft copy (in MS- Excel) by e-mail to fdidata@rbi.org.in

6.5 Shares purchased / sold by FIIs/FPIs under private arrangement will be by debit /credit to their Special Non-Resident Rupee Account. Therefore, the transaction should **also** be reported in Form LEC by the designated bank of the FII/FPI concerned.

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

6.7 On receipt of statements from the AD, 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.

Annex- 3

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.

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

* RBI's A.P. (DIR Series) Circular No. 14 Dated 15.09.2011

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 - 5

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	

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

FOR USE OF THE RESERVE BANK ONLY:

Unique Identification Number for the remittance received:

Annex – 6

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 – 7

RESERVE BANK OF INDIA

Annual Return on Foreign Liabilities and Assets *as on* **31 March, 20 _ _**

(Return to be filled under A.P. (DIR Series) Circular No. dated and submitted to the Department of Statistics and Information Management, RBI, Mumbai)

Please read the guidelines/definitions carefully before filling-in the Return

(Respondents are encouraged to submit the e-form of this return, which can be downloaded from the FEMA Forms section under the 'Forms' category on the RBI website, www.rbi.org.in. The e-form is easy-to-fill with user guidance and consistency checks. The duly filled-in e-form should be emailed.

1. Name and Address of the Indian Company:

Name of the Company: ____________________________

Address: ____

City: State:

Pin:

2. PAN Number of Company given by Income Tax Department **(10 digit)**

3. CIN Number allotted by Ministry of Corp. Affairs, Govt. of India **(21 digit)**

4. Contact Details

Contact Person Name: Designation:

Telephone No: Fax:

e-mail: &RP 51Q 's Web- Site (if any):

5. Account closing date **(DD/MM/YYYY)**

6. Nature of Business:____

(As per National Industrial Classification (NIC) 2008 Code)

7. Whether your Company Name has changed during the last financial year (April - March) **(Y/N)**?

If yes, please specify the Company's old Name

Company's old Name: ________

Effective Date **(DD/MM/YYYY)**

8. Whether the Company is listed **(Y/N)**?

If yes, please furnish the share price on closing date of reference period

	Face Value (Per Share)	Market Value (Per Share)	
	Latest March	Previous March	Latest March
Ordinary/Equity Share			

9. Identification of the reporting Company **(in terms of inward FDI)**

(a) Subsidiary of Foreign entity **(b) Associate of foreign entity**

(c) Public Private Partnership **(d) Special Purpose Vehicle** **(d)Other**

10. Whether the Company is Asset Management Company **(Y/N)**?

11. Whether the Company has Technical Foreign collaboration **(Y/N)**?

12. Whether the company has any business activity during the last financial year (April - March) **(Y/N)**?

Section II

(Financial Details)

Block 1: Financial Detail of Reporting Company

CARE: Information should be reported for all the reference period, i.e. Previous March and Latest March. If reporting period is different from Account Closing Period, then information should be given on internal assessment

Block 1A: Total Paid- up Capital of Indian Company:

Item	End-of Previous March		End-of Latest March	
	Number of Shares in actual	Amount in Rs lakh	Number of Shares in actual	Amount in Rs lakh
1.0 Total Paid-up Capital (= 1.1 + 1.2)				
1.1 Total Equity & Participating Preference Share capital (= 1.1(a) + 1.1(b))				
(a) Ordinary/Equity Share*				
(b) Participating Preference Share				
1.2 Non-participating Preference Share#				
2.0 Non-resident Holdings (at face value in Rs lakh)				
2.1 Equity & Participating Preference share capital (Sum of item-1 to item-12)				
1 Individuals				
2 Companies				
3 Foreign Institutional Investors (FIIs)				
4 Foreign Venture Capital Investors (FVCIs)				
5 Foreign Trusts				
6 Private Equity Funds				
7 Pension/ Provident Funds				
8 Sovereign Wealth Fund (SWF)				
9 Partnership/ Proprietorship firms				
10 Financial Institutions				
11 NRIs/PIO				
12 Others non-resident holdings				
2.2 Non-Participating Preference share				
3.0 Non Resident Equity & Participating Preference share capital %				

Note

*In case of different class of Equity Share (class A, class B etc.), consolidated figure should be reported.

#Non-participating Preference Share do not have following rights.

(a) to receive dividend, out of surplus profit after paying the dividend to equity shareholders.
(b) to have share in surplus assets remaining after the entire capital is paid in case of winding up of the company.

Block 1B: Profit and Loss Account **(from P/L Account)**

Item	Amount in Rs lakh	
	Previous Year (April - March)	Latest Year (April - March)
3.1Profit (+) /Loss (-) before tax **(During the Year)**		
3.2 Profit (+) / Loss (-) after tax **(During the Year)**		
3.3 Dividend (Interim & Final Dividend)		
3.4 Tax on Dividend (if any)		
3.5 Retained Profit (= 3.2 - 3.3 - 3.4)		

Block 1C: Reserves & Surplus **(from Balance Sheet)**

Item	Amount in Rs lakh as at the end of	
	Previous March	Latest March
4.1 Reserves **(Excluding Profit and Loss account balance)**		
4.2 Profit (+) and Loss (-) account balance		
4.3 Reserve and Surplus (= 4.1 + 4.2)		
4.4 Net worth of Company (= 1.1 + 4.3)		

Block 1D: Sales and Purchase made during the Financial Year

Note: To be filled in by company where single foreign direct investor holding is more than 50% in total equity (i.e. If reporting Indian company is subsidiary of Foreign company).

Item	Amount in Rs lakh (During the year)	
	Previous March	Latest March
5.1 Domestic Sales		
5.2 Exports		
5.3 Total Sales (= 5.1+ 5.2)		
5.4 Domestic purchase		
5.5 Imports		
5.6 Total Purchase (= 5.4 + 5.5)		

Section III

(FOREIGN LIABILITIES)

CARE: Information should be reported for all the reference period, i.e. Previous March and Latest March. If reporting period is different from Account Closing Period, then information should be given on internal assessment.

2. Investments made in India:

(i) In case of **listed companies,** equity should be valued **using share price on closing date of reference period**.
(ii) In case of **unlisted companies, Own Fund of Book Value (OFBV) Method** should be used.

Block-2A:

Investment in India under Foreign Direct Investment (FDI) scheme (10% or more Equity Participation).

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were **individually holding 10 per cent or more** ordinary/equity & preference shares of your company on the reporting date]

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
				Previous March	Latest March
	1.0 Equity Capital (= 1.1 - 1.2)				
	1.1 Liabilities to Direct Investor				
	1.2 Claims on Direct Investor (Reverse investment)				
	2.0 Other Capital # (= 2.1 - 2.2)				
	2.1 Liabilities to Direct Investor				
	2.2 Claims on Direct Investor				

Note:
(i) If the information is to be furnished for more than one investor, then add separate Block with same format
(ii) #: Other capital, item 2.1 & 2.2 of Block-2A includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its **director investor indicated in Block-2A.**

Block 2B:

Investment in India under Foreign Direct Investment (FDI) scheme (Less than 10% Equity Holding)

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were individually holding less 10 than per cent ordinary/equity and participating preference shares of your company on the reporting date].

Country-wise consolidated information should be provided below:

Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
			Previous March	Latest March
1.0 Equity Capital (= 1.1-1.2)				
1.1 Liabilities to Direct Investor				
1.2 Claims on Direct Investor (Reverse investment)				
2.0 Other Capital (= 2.1-2.2) **#**				
2.1 Liabilities to Direct Investor				
2.2 Claims on Direct Investor				

Note:

(i) If the information is to be furnished for more than one country, then add separate Block with same format.

(ii) #: Other capital, item 2.1 & 2.2 of Block-2B includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with **non-resident investors holding less than 10 per cent equity and related parties.**

2C. Portfolio Investment in India

Please furnish here the outstanding investments by non-resident investors, other than those made under Foreign Direct Investment Scheme in India (i.e. other than those reported in Block-2A & Block-2B).

Portfolio Investment	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
		Previous March	Latest March
1.0 Equity Securities (at Market Value)			
2.0 Debt Securities (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto1year)			
2.2 Bonds and Other instruments (original maturity more than 1year)			

Please ensure that Non-resident Equity & Participating Preference share capital mentioned at item 2.1 of block 1(A) should be reported in either Block-2A or Block-2B or Block-2C at Market Value i.e. sum of equity % in Block-2A, Block-2B & Block-2C must be equal to the item 3.0 of Block-1A for the latest march.

<u>**Section IV**</u>

(FOREIGN ASSETS)

1. Please use the **exchange rate as at end-March Previous FY and end-March Latest FY** (as applicable) of reporting year while reporting the **foreign Assets in Rs lakh**.
2. If overseas company is listed; equity should be valued using share price on closing date of **reference period.**
3. If overseas company is **unlisted, Own Fund of Book Value (OFBV**) Method should be used for valuation of equity in**vestment.**

Block-3: Equity Capital, Reserves & Surplus of Direct Investment Enterprise (DIE) Abroad (10% or more equity holding by Indian Reporting company)

[Please report here the total equity of DIE, **equity held by your company**, reserves (excluding P&L Account) and P&L Account of those DIEs in each of which your company hold 10% or more equity shares on the reference date.]

Name of the DIE	**Item**	**Currency**	**Amount in Foreign Currency as at the end of (in actual)**	
			Previous March	**Latest March**
	3.1 Total Equity of DIE			
	3.2 Equity of DIE held by you			
	3.3 Reserves (Excluding P&L Account)			
	3.4 Profit and Loss Account balance			
	3.5 Reserve and Surplus (=3.3+3.4)			
	3.6 Net Worth of DIE (=3.1+3.5)			
	3.7 Exchange rate in Rs per unit foreign currency*			

*: Exchange rate of reporting foreign currency against Indian Rs should be given as on closing date of reference period. FEDAI website (http://www.fedai.org.in) may be used for Exchange rates.

Block-4: Direct Investment Abroad under Overseas Direct Investment (ODI) Scheme

Block-4A: Direct Investment Abroad (10% or more equity holding)

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold 10% or more equity shares on the reference date.

Name of the non-resident DIE	**Type of Capital** / **Country of non-resident DIE**	**Equity holding per cent as at the end of latest year (%)**	**Amount in Rs lakh as at the end of**	
			Previous March	**Latest March**
	1.0 Equity Capital (=1.1-1.2)			
	1.1 Claims on Direct Investment Enterprise			
	1.2 Liabilities to Direct Investment Enterprise (Reverse investment)			
	2.0 Other Capital (=2.1-2.2) #			
	2.1 Claims on Direct Investment Enterprise			
	2.2 Liabilities to Direct Investment Enterprise			

Note:
(i) If the information is to be furnished for more than one overseas company, then ADD separate Block 3 and Block 4A with the same format.
(ii) #: Other capital, item 2.1 & 2.2 of Block-4A includes all other liabilities and claims at Nominal value, except equity shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its DIE reported **in Block-4A.**

Block-4B: Direct Investment Abroad (Less than 10% equity holding).

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold less than 10 % equity shares on the reference date.

Type of Capital	**Country of non-resident DIE**	**Equity holding per cent as at the end of latest year (%)**	**Amount in Rs lakh as at the end of**	
			Previous March	**Latest March**
1.0 Equity Capital (=1.1-1.2)				
1. 1Claims on Direct Investment Enterprise				
1.2 Liabilities to Direct Investment Enterprise (Reverse investment)				
2.0 Other Capital (=2.1-2.2) **#**				
2.1 Claims on Direct Investment Enterprise				
2.2 Liabilities to Direct Investment Enterprise				

Note:
(i) If the information is to be furnish for more than one country, then use the ADD Block 4B with the same format.
(ii) # : Other capital, item 2.1 & 2.2 of Block-4B includes all other liabilities and claims at Nominal value, except equity, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with **non-resident companies where Indian company holds less than 10 per cent equity and also with related parties**.

Block-5: Portfolio Investment Abroad

Please furnish here the market value of outstanding investments in non-resident enterprises, **other than those made under ODI scheme reported in Block-4.**

Portfolio Investment	**Country of non-resident enterprise**	**Amount in Rs lakh as at the end of**	
		Previous March	**Latest March**
1.0 Equity Securities (at Market Value)			
2.0 Debt Securities (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto1 year)			
2.2 Bonds and Other instruments (original maturity more than 1 year)			

Note:
(i) Country wise consolidated information pertaining to each type of investment should be reported separately.
(ii) If the information is to be furnish for more than one country, then use the ADD Block 5 with the same format..

Section V

(Other Assets and Liabilities)

Block 6: Other Investment (i.e., position with unrelated parties)

This is a residual category that includes all financial outstanding liability and claims not considered as direct investment or portfolio investment.

Other Investment	Outstanding Liabilities with unrelated party		Outstanding claims on unrelated party	
	Amount in Rs lakh as at the end of			
	Previous March	Latest March	Previous March	Latest March
6.1 Trade Credit				
6.2 Loans				
6. 3 Currency & Deposits				
6. 4 Other receivable and payable accounts				

[e-Form version of this Return is available on the FEMA Forms section under the 'Forms' category on the RBI website (www.rbi.org.in). System Requirement: MS-Excel 2003 and above, with macro enabled]

Declaration

The foreign investment received and reported have been 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

Place: Signature and Name of the Authorized person

Date: Seal/Stamp of the Company

Annex – 8

Form FC-TRS		
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		
	(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)	
	The following documents are enclosed *For sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident in India* 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. ii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India. iii. Certificate indicating fair value of shares from a Chartered Accountant. iv. Copy of Broker's note if sale is made on Stock Exchange. 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. vi. Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached. *Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident outside India* 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. viii. No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Account.	
1	**Name of the company**	
	Address (including e-mail , telephone Number, Fax no)	
	Activity	

	NIC Code No.	
2	**Whether FDI is allowed under Automatic route**	
	Sectoral Cap under FDI Policy	
3	**Nature of transaction** *(Strike out whichever is not applicable)*	Transfer from resident to non resident / Transfer from non resident to resident
4	**Name of the buyer**	
	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[∂]) 9. Partnership / Proprietorship 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	**Name of the seller**	
	Constitution / Nature of the disinvesting entity Specify whether 1. Individual 2. Company	

[#] The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000

[∂] SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

	3. FII 4. FVCI[##] 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[∂]) 9. Partnership/ Proprietorship firm 10. Financial Institution 11. NRIs/PIOs 12. Others[i]	
	Date and Place of Incorporation	
	Address of the seller *(including e-mail, telephone Number Fax 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**	

	Date of the transaction	***Number of shares CMCPS / debentures /others***	***Face value in Rs.***	***Negotiated Price for the transfer**in Rs.***	***Amount of consideration in Rs.***

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**			

[##] The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000.

[∂] SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

	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/ other 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 /other of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures /others of a company engaged in financial services sector or a sector where general permission is not available.
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/ other 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

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 :

Proforma

Statement of inflows/outflows on account of remittance received/made in connection with transfer of shares / compulsorily and mandatorily convertible preference shares / debentures/others/other, by way of sale

Category-wise

Part A - NRI/erstwhile OCB

Part B - Foreign National/non-resident incorporated entity

Part C - Foreign Institutional Investors

Inflow -Transfer from resident to non-resident

[**Amount in Rs**.]

Date of Transaction	Name of the Company	Activity	NIC Code	Name of the Buyer	Constitution/ Nature of Business of the Buyer	Name of the Seller	Constitution/ Nature of Business of the Seller	No. of Shares transferred	Face Value	Sale price per share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Outflow - Transfer from non-resident to resident

[**Amount in Rs**.]

Date of Transaction	Name of the Company	Activity	NIC Code	Name of the Seller	Constitution/ Nature of Business of the Seller	Name of the Buyer	Constitution/ Nature of Business of the Buyer	No. of Shares transferred	Face Value	Sale price per share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Annex –9

Form DR

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

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 purposes 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 addresses 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 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 (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	:	Before Issue After Issue

	list of foreign investors holding more than 10 per cent 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 ADRs/GDRs issued to each of them.	:	
14.	Number of GDRs/ADRs issued	:	
15.	Ratio of GDRs/ADRs to underlying shares	:	
16.	<u>Issue Related Expenses</u> : (a) Fee paid/payable to Merchant Bankers/Lead Manager (i) Amount (in US $ etc.) (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		

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

Annex –10

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.

B. 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/-	*Sd/-*
Chartered Accountant	Authorised Signatory of the Company

Certificate to be Furnished by the Prospective Investor as well as the Prospective Recipient Entity
(Para 6.2.18.3 (ii))

It is certified that the following is the complete list of all inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity

1. ………………
2. ……………….
3. ……………….

(copies of all agreements to be enclosed)

It is also certified that none of the inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity contain any non-compete clause in any form whatsoever.

It is further certified that there are no other contracts/agreements between the foreign investor(s) and investee brownfield pharma entity other than those listed above.

The foreign investor(s) and investee brownfield pharma entity undertake to submit to the FIPB any inter-se agreements that may be entered into between them subsequent to the submission and consideration of this application.