

Foreign Direct Investments and Indirect Foreign Investments

Seminar on FEMA

WIRC

MUMBAI

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Road Map

- Role of RBI in FDI
- Regulations - Consolidated Circular on FDI by DIPP and FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations
- Important Definitions
- FDI Sectors
- Modes of Foreign Investment in India
- Overview of FDI Policy
- Automatic Route and Government Routes for Investment
- Who can invest in India
- Eligible Investee Entities
- FDI other than Direct Investment
- Indirect Investment

Role of RBI in FDI

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- RBI exercises control over Foreign Investment through Foreign Exchange Department at Central office, Fort and various regional offices
- Website of the RBI has all the circulars and forms
- Statutory amendment to the FDI Policy is provided by the RBI as amendment to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India), Regulations, 2000 ('FEMR')

Regulations

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- Consolidated FDI Policy
- Press Notes / Press Releases by DIPP to be notified by the RBI as amendments to the Foreign Exchange Management (Transfer or Issue of a Security by a Person Resident Outside India) Regulations, 2000
- Notifications take effect from the date mentioned in the Press Notes / Press Releases unless specified therein
- In case of conflict, the relevant FEMA Notification will prevail (on account of time lag between press notes and amendment to the FEMA Regulations)

Current Regulations

- Consolidated FDI Policy 7 June 2016 by Department of Industrial Policy and Promotion ('DIPP') and subsumes and supersedes all Press Notes/ Press Releases / Clarifications / Circulars by DIPP till 6 June 2016
- Press Notes / Press Releases by DIPP after 7 June 2016
- Foreign Exchange Management (Transfer or Issue of a Security by a Person Resident Outside India) Regulations by the Reserve Bank of India ('RBI') and amendments made thereto

Important Definitions

- FDI - '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
- Non-Resident Entity - 'Non-resident entity' means a 'person resident outside India' as defined under FEMA
- Non-Resident Indian - 'Non-Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955. 'Persons of Indian Origin' cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be 'Overseas Citizen of India' cardholders'

Important Definitions

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- ‘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.
- ‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants.

Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, ‘warrant’ includes Share Warrant issued by an Indian Company in accordance to provisions of the Companies Act, as applicable.

Important Definitions

- ‘Non-Resident Indian’ (NRI) means an individual resident outside India who is a citizen of India or is an ‘Overseas Citizen of India’ cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955. ‘Persons of Indian Origin’ cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be ‘Overseas Citizen of India’ cardholders’
- Person resident outside India’ means a person who is not a Person resident in India
- Resident Entity’ means ‘Person resident in India’ excluding an individual
- ‘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
- 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)

Important Definitions

- '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.

FDI – Prohibited Sectors

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- ❑ Lottery Business including Government/private lottery, online lotteries, etc.
- ❑ Gambling and Betting including casinos etc.
- ❑ Chit funds
- ❑ Nidhi company
- ❑ Trading in Transferable Development Rights (TDRs)
- ❑ Real Estate Business or Construction of Farm Houses
‘Real estate business’ shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

FDI – Prohibited Sectors

- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities mentioned in para 5.2).
- 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.

Sector specific conditions on FDI

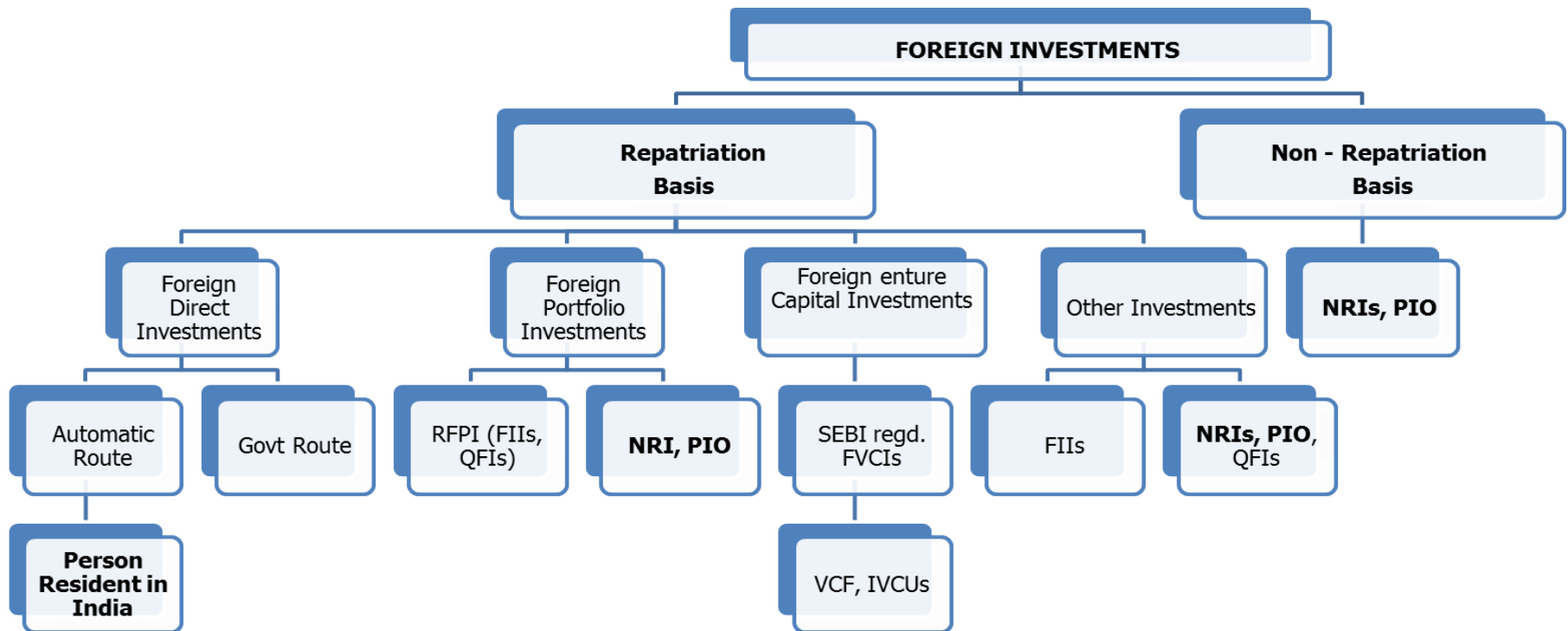
- For certain sectors, FDI permission and sectoral caps, minimum capitalisation norms and other conditions specified
- Where not specified, 100% FDI is permitted under automatic route, subject to applicable laws/regulations; security and other conditionalities
- Requirement of minimum capitalization- Includes share premium with face value when received by the company upon issue of shares to non-resident investor. Amount paid during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement
- Sectoral cap i.e. the maximum amount which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect
- FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.

Sector specific conditions on FDI

- Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval
- Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.
- Portfolio investment, up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy.
- Total foreign investment, direct and indirect, in an entity will not exceed the sectoral cap
- Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to amendments introduced through Press Note 8 (2015 Series)
- The onus of compliance of above provisions will be on the investee company

Background

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Foreign Direct Investment and Indirect Foreign Investments

Modes of Foreign Investment in India

- FDI comprising of equity in India, convertible debentures / preference shares, Depository Receipts ('DR') (ADR/GDR/FCCB) and LLP – Automatic Route or Government Route (approval route) for Foreign Investors as well a NRIs
- Foreign Portfolio Investment by NRI /PIO, FII, QIB and RFPI
- Foreign Venture Capital Investment by SEBI registered FVCIs
- Investment in G-Sec (Government Securities), NCDs etc by RFPI, FII, NRI, Foreign Central Bank
- Investment on repatriation and non-repatriation basis by NRI and PIO

Modes of Foreign Investment in India

- In FDI, generally there is foreign controlling shareholding. Where there are restrictions on shareholding, at least substantial share is of foreign investor and investment is long term
- Portfolio Investment is only with the intention of investing in securities to earn profits by way of capital appreciation and / or dividend with no intention to control the company in which the investment is made

Modes of Foreign Investment in India

- Foreign investment means all types of foreign investment, except debt (ECBs)
 - All types of foreign investments, direct and indirect, regardless whether they are made under Schedule 1 (FDI), Schedule 2 (FII), Schedule 2A (FPI), Schedule 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11 (Investment Vehicles) of FEMR
 - FCCBs and DRs which have underlying instruments under Schedule 5, being in the nature of debt, shall not be treated as foreign investment
 - Any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment – Para 3.2.2.(v) of the Consolidated FDI Policy

Overview of FDI Policy

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- Foreign Investment in India is broadly free
 - There are restrictions, conditions and prohibitions in respect of investment in various sectors
- Investment can be under Automatic Route or Government Approval Route
- Under Automatic Route, prior approval is not required
 - Post receipt of FDI, intimation is required within the timelines specified
- Under Government Approval Route, prior approval from the Government of India is required
 - Government route means that investment in the capital of the resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs, Ministry of Finance or Department of Industrial Policy & Promotion) as the case may be

Approval Route

- Current approval process
 - Approval was given by the Foreign Investment Promotion Board ('FIPB')
 - However, FIPB was abolished wef 5 June 2017
 - Now Individual Departments of the Government have been empowered to clear FDI proposals in consultation with the DIPP which will issue Standard Operating Procedures for processing applications
 - Pending proposals are in the process to be sent back to the Individual Departments of the Government
 - Timelines will be fixed for approving applications regarding FDI by competent authorities
 - Mandatorily require concurrence of DIPP
 - Rejection by the department concerned
 - Imposition of additional conditions other than specified in the FDI Policy

Approval Route

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- Levels of approval under Government Route
 - MOF considers the recommendations of DIPP or concerned administrative ministry on proposals with total foreign equity inflow of and below Rs. 5,000 crores (Para 4.2.1 of the Consolidated FDI Policy) (till 5 June 2017, this was handled by FIPB)
 - Recommendations of concerned administrative ministry or DIPP on proposals with total foreign equity inflow exceeding Rs. 5,000 crores would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA) (Para 4.2.2 of Consolidated FDI Policy)
 - CCEA may also consider proposals which may be referred to it by the DIPP or concerned administrative ministry Para 4.2.3 of Consolidated FDI Policy)
- Online applications for Government Approval
 - Guidelines for e-filing of applications and instructions to applicants are available at FIPB's website www.finmin.nic.in and www.fipb.gov.in (Para 4.4.1 of the Consolidated FDI Policy)
 - Since FIPB has been abolished wef 5 June 2017, the applications will be forwarded to the concerned administrative Ministry or DIPP

Approval Route

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- Foreign investment in sectors/activities under government approval route will be subject to government approval where:
 - Foreign Control is involved - I Co is being established with foreign investment and:
 - is not owned by a resident entity; or
 - is not controlled by a resident entity
 - **Control** or **ownership** of an existing I Co by Resident Indian citizens and Indian Companies, which are owned and controlled by Resident Indian citizens, is transferred 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

Approval Route

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- Cases which do not require fresh approval for bringing in additional foreign investment into the same entity:
 - Activities which earlier required prior approval and was obtained for initial foreign investment but subsequently have been placed under automatic route
 - Activities which earlier had sectoral caps and for which prior approval was obtained for their initial foreign investment but subsequently such caps were removed/increased and placed under the automatic route
 - provided that such additional investment along with the initial/original investment does not exceed the sectoral caps
 - Additional foreign investment into the same entity where prior approval had been obtained for the initial foreign investment as per 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
 - Additional foreign investment into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary

Who can Invest in India – Regulation 5 rw Schedule 1

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- Eligible Investors: Person Resident Outside India (‘PROI’) within Sectoral caps
 - Except in those sectors which are prohibited
 - Citizen of / entity in Bangladesh only under approval route
 - Citizen of / entity in Pakistan only under approval route in sectors other than defence, space and atomic energy and sectors prohibited for foreign investment
- Eligible Entities: Indian Companies
- Investee
- NRIs resident in Nepal and Bhutan, citizens of Nepal and Bhutan
 - Amount should be received by way of inward remittance in free foreign exchange through normal banking channels
- OCBs derecognised wef 16 September 2003
 - Erstwhile OCBs not under the adverse notice of RBI can make fresh investments under FDI Policy with prior approval of GOI if under approval route and of RBI if under automatic route

Schedule 1 – Shares / Debentures of Indian Companies

- Investment in shares / debentures of an Indian Company
 - Shares or convertible debentures with optionality clauses without any option / right to exit at an assured price included
 - Other than cash against pre-operative expenses by WOS 100% FDI under automatic route and no FDI linked conditions, shares / CDs/ Warrants upto 5% of capital of USD 5,00,000 whichever is less
- Remittance: Through normal banking channels / debit to NRE or FCNR Account / debit to non-interest bearing Escrow Account
- Rate of dividend on preference shares : 300 basis points over PLR of SBI as on Board Meeting
- Investment is repatriable subject to restrictions in certain cases
- Interest and dividend are freely repatriable subject to TDS
- Approval from RBI - if essential to keep subscription amount in a foreign currency account

Instruments of Investments

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- Indian Companies – Equity Shares, Fully, Compulsorily and Mandatorily Convertible Debentures, Fully, Compulsorily and Mandatorily Convertible Preference Shares subject to pricing guidelines and valuation norms
- Conversion price / formula to be determined upfront
 - Price at the time of conversion cannot be lower than the fair value at the time of issue of shares
- Optionality clauses are allowed in equity shares FCDs / CCDs / CCPS subject to the following:
 - Minimum lock-in period of 1 year effective from the date of allotment
 - Can convert / exit without any assured return as per pricing / valuation guidelines
 - Pricing for listed shares – market price prevailing on the Stock Exchange
 - Unlisted Company – At a price not exceeding as per internationally accepted pricing methodology for valuation of shares arrived at on arm's length basis duly certified by a Chartered Accountant or a SEBI Registered Merchant Banker
 - Guiding principle that non-resident investor is not guaranteed any assured exit price and shall exit at the price prevailing at the time subject to lock-in period requirement

Instruments of Investments

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- Any other type of Debentures / Preference shares after 1 May 2007 are considered as debt and ECB provisions shall be applicable
- Warrants and Partly-paid shares
 - Terms and conditions of the RBI

Pricing Guidelines

- Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than –
 - ▣ 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;
 - ▣ the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and
 - ▣ 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.
- Non-residents (including NRIs) making investments in I Co by way of subscription to MOA, as per Companies Act, investments may be made at face value subject to their eligibility under FDI

Instruments of Investments other than Shares / Convertible Debentures

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- FCCBs and DRs
- Inward remittance for DRs and FCCBs are FDI
- Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and DR Scheme 2014, as per the guidelines issued by the Government of India
- DRs are foreign currency denominated instruments issued by a foreign Depository in a permissible jurisdiction against a pool of permissible securities issued or transferred to that foreign depository and deposited with a domestic custodian
- A person can issue DRs to a person resident outside India under Schedules 1,2, 2A, 3, 5 and 8 of FEMA 20
- Aggregate of eligible securities issued or transferred to Foreign Depositories along with eligible securities shall not exceed limit on foreign holding of such eligible securities
- Pricing for DRs should not be less than the price applicable to a corresponding mode of issue or transfer of securities to domestic Investor
- Reported to the RBI as per DR Scheme 2014

Instruments of Investments

- 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.
- 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

Reporting of FDI

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- Reporting of Inflow
 - 30 days in Form ARF on the ebiz portal with KYC and FIRC
 - UIN is allotted
- Reporting of issue of shares
 - 30 days in Form FC-GPR on ebiz portal
 - To be signed by the Managing Director / Director
 - Documents to be submitted:
 - A certificate from the Company Secretary of the company certifying that all the requirements of the Companies Act, as applicable, have been complied with; terms and conditions of the Government of India approval, if any, have been complied with; the company is eligible to issue shares under these Regulations; and 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.
 - A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares to the persons resident outside India.

Chart of compliance

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- Step 1: Board Meeting and EGM for approval of private placement to non-resident Investor under Companies Act
- Step 2 : Receipt of funds
- Step 3 : Reporting on Inflow in Advance Reporting Form on ebiz website
 - Name and complete address of Investor
 - Date of receipt of funds
 - Within 30 days of receipt
 - With KYC and FIRC
 - KYC to be provided as a Swift Message from the Overseas Remitting Bank to Indian Bank
 - KYC should include Registered Name of the Investor;
 - Unique Identification Number (Passport Number, Social Security number etc);
 - Permanent Address;
 - Name of Overseas Remitting Bank;
 - Non-Resident Investor's Bank Account Number;
 - Period of Banking Relationship with the Non-Resident Investor

Chart of compliance

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- Step 3 : Reporting on Inflow in Advance Reporting Form on ebiz website
 - FIRC – Should apply for FIRC immediately on the date of receipt
 - Banks could take 10-15 days to provide FIRC
 - UIN will be allotted for Form ARF
- Step 4: Allotment of Shares
 - FEMA – Within 180 days
 - Companies Act – Within 60 days
 - Hence, 60 days
 - Pricing cannot be less than:
 - FEMA – Internationally accepted method
 - Companies Act – No specific method
 - Income-tax Act – Not applicable to the Company, could be applicable to non-resident investor Section 56(2)(x)

Chart of compliance

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- Step 5: Form FC-FPR
 - Within 30 days of allotment of shares
- Step 6: RBI Registration Letter
 - On approval, RBI gives RBI Registration Letter
- Process starts 30 days before receipt of funds as per Companies Act
- Process is completed only on receipt of RBI Registration Letter
- KYC could be time-consuming and hence it is suggested that the Remitter Bank and the Recipient Bank be informed in advance to file Form ARF within 30 days of receipt of funds
- Ensure that bank charges are on the non-resident Investor
- Need to work closely with the Banks to ensure timely submission

E-Commerce Sector

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- E-commerce:
 - ‘E-commerce’ means buying and selling of goods and services including digital products over digital & electronic network.
 - ‘E-commerce entity’ means a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in Section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.
 - ‘Inventory based model of e-commerce’ means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.
 - ‘Market place model of e-commerce’ means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.”
- B2B E-commerce 100% under Automatic Route
 - 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
- Market place model of e-commerce 100% under Automatic Route
- FDI is not permitted in Inventory based model of e-commerce

E-Commerce Sector – Other Conditions

- Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.
- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services.
- E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model.
- **An e-commerce entity will not permit more than 25% of the sales value on financial year basis affected through its marketplace from one vendor or their group companies.**
- Goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- Payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- Any warranty /guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
- Guidelines on cash and carry wholesale trading as given in S.No. 16.1.2 shall apply to B2B e-commerce activities.

Startups – Convertible Notes

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- Eligible Investor: PROI (other than an Individual who is a citizen of Pakistan or Bangladesh or an entity which is registered / incorporated in Pakistan or Bangladesh)
- Eligible Investee: Startup Company
 - ‘Startup Company’ means a private Indian Company incorporated under the Companies Act and recognised as such in accordance with notification number G.S.R. 180(E) of 17 February 2016 by DIPP, Ministry of Commerce and Industry
- Government approval for convertible notes where foreign investment requires approval
- Shares against convertible notes as per Schedule 1
 - Convertible Notes instrument issued initially as a debt, repayable at the option of the holder or convertible into equity shares, within a period not exceeding 5 years from the date of issue upon occurrence of specified events as mentioned in the instrument
- Remittance : Inward remittance through normal banking channels, debit to NRE / FCNR (B) account, Escrow account (cannot be open for more than 6 months)
- NRIs on non-repatriation basis as per Schedule 4
- PROI can acquire, transfer by way of sale as per RBI Guidelines
- Startup to furnish reports to the RBI

Startups - Definition

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- To bring uniformity in the identified enterprises, an entity shall be considered as a 'startup' -
- Up to five years from the date of its incorporation/registration, turnover for any of the financial years has not exceeded Rs. 25 crore, and it is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.
- Cannot be formed by splitting up or reconstruction of a business already in existence
- To obtain tax benefits, require certificate an eligible business from Inter-Ministerial Board of Certification
- An entity (companies and LLPs) shall cease to be a startup on completion of five years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rs. 25 crore.
- Turnover is as defined under the Companies Act, 2013.
- Working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize:
- A new product or service or process, or
- A significantly improved existing product or service or process, that will create or add value for customers or workflow.
- Provided that the mere act of developing: products or services or processes which do not have potential for commercialization, or undifferentiated products or services or processes, or products or services or processes with no or limited incremental value for customers or workflow would not be covered under this definition

Investee Entities – LLPs

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- Eligible Investors:
 - A PROI (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP.
- Eligible investment
 - Contribution to the capital of an LLP
 - Investment by way of 'profit share' will fall under the category of reinvestment of earnings
- Eligibility of LLP
 - Automatic route where 100% FDI is allowed without FDI linked performance conditions
 - An I Co or LLP is permitted to make downstream investment in another I Co or LLP in which 100% FDI is allowed without FDI linked performance conditions – Onus on I Co / LLP accepting downstream investments to ensure compliance
 - Compliance with conditions of LLP Act, 2008
 - I Co having Foreign Investment can be converted into LLP under Automatic Route if Automatic route where 100% FDI is allowed without FDI linked performance conditions

Investee Entities – LLPs

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- **Pricing**
 - FDI in a LLP either by way of capital contribution or by way of acquisition / transfer of profit shares, would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted / adopted as per market practice and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government
 - In case of transfer of capital contribution / profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution / profit share of an LLP. Further, in case of transfer of capital contribution / profit share from a non-resident to resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution / profit share of an LLP
- **Mode of payment** - Inward remittance through banking channels; or debit to NRE / FCNR(B) account with AD Bank
- **Reporting**
 - Manner prescribed
 - Annual Return on Foreign Liabilities and Assets before 15 July to be filed and then revised based on audited amounts and LLP should apply for dummy CIN from the RBI

Schedule 3 – Shares / Debentures of Indian Companies by a NRI on Repatriation basis under Portfolio Investment Scheme

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- Eligible Entities: Indian Companies or units of an Investment Vehicle
- Eligible Investors: NRI
- Investment in shares / debentures of an Indian Company through registered broker on recognised stock exchange in India on repatriation basis under Portfolio Investment Scheme
- Each NRI - Paid up value of instruments purchased should not exceed 5% of the shares of the Company / convertible debentures / Preference shares/ warrants of that series
- All NRIs - Paid up value of instruments purchased should not exceed 10% of the shares of the Company / convertible debentures / Preference shares/ warrants of that series
 - 10% can be raised to 24% can be increased by Special Resolution of Shareholders
- NRI must take delivery of shares
- Subject to sectoral caps

Schedule 3 – Shares / Debentures of Indian Companies by a NRI on Repatriation basis under Portfolio Investment Scheme

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- Report of RBI by AD Bank in prescribed format
- Bank Account
- Designated NRE Bank Account called NRE (PIS) Account
- Permitted Credits in NRE (PIS) Account
 - Inward remittances through normal banking channels
 - Transfer from other NRE accounts / FCNR (B) accounts
 - Net sale proceeds after tax from sale of investments under this Scheme
 - Dividend or income earned on investment on repatriation basis under this Scheme
- Permitted Debits in NRE (PIS) Scheme
 - Outward remittance of dividend income earned
 - Amounts paid for purchase of investments under this Scheme
 - Any charges on account of sale / purchase of investments under this Scheme
 - Remittances outside India or transfer to NRE / FCNR (B) Accounts
- NRE (PIS) Account may be re-designated as NRO Account

Schedule 4 – Acquisition of Securities by a NRI on Non-Repatriation basis

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- Eligible Entities and Investment: On Non-Repatriation Basis without any limit
 - Indian Companies – shares, debentures, warrants on the stock exchange or otherwise
 - Units of an Investment Vehicle on the stock exchange or otherwise
 - Contribution to the capital of a Partnership Firm, proprietary firm or LLP
- Eligible Investors: NRI including a Company, Trust and a Partnership Firm incorporated outside India and owned and controlled by non-resident Indians
 - ‘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. For the purposes of Limited Liability Partnership, ‘control’ will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.
 - 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. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately ‘owned and controlled by resident Indian citizens’ and such resident Indian citizens and entities have majority of the profit share.

Schedule 4 – Acquisition of Securities by a NRI on Non-Repatriation basis

- Cannot purchase investments of a Nidhi Company / agricultural / plantation activity or real estate business / construction of farm houses / dealing in TDRs
 - ‘Real estate business’ means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential /commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent income on lease of the property, not amounting to transfer, will not amount to “real estate business”. Investments in units of Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014 shall also be excluded from the definition of “real estate business”
- Inward remittance through normal banking channels / NRE / FCNR / NRO Accounts maintained with a Bank in India
- Sale proceeds - Net of taxes only to NRO Account
- Amount invested and capital appreciation is not allowed to be repatriated abroad

Investee Entities - Partnership Firm / Proprietary concern by NRI/PIO

44

- Provisions as per FEM (Investment in Firm or Proprietary concern in India) Regulations, 2000
- Eligible Investors : NRI/PIO
 - Other Investors can seek prior approval of the RBI to be decided in consultation with Government of India
- Investment: Contribution to the capital of the firm / proprietary concern
- Route: Inward remittance / debit to NRE/FCNR(B)/NRO Account
- Activities: other than:
 - Agricultural / plantation activity;
 - Real Estate business ie dealing in land and immovable property to earn profit or income;
 - Print media
- Repatriation: Not available
 - NRI/ PIO can seek prior permission of the RBI for investment on repatriation basis to be decided in consultation with Government of India
- Trusts
 - FDI is not permitted in Trusts other than VCFs registered and regulated by SEBI and 'Investment Vehicle'

FDI – Transfer of Shares

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- Subject to FDI sectoral policy, applicable laws and other conditions, non-resident investors can invest in I Cos by purchasing existing shares from Indian shareholders or from other non-resident shareholders
- PROI including NRI who has already acquired and continues to hold control in accordance with SEBI Takeover Regulations can acquire shares of a Listed I Co on the SE through registered Stock Broker under FDI Scheme subject to sectoral cap and other conditions

FDI – General Permission for Transfer of Shares

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- General permission granted to non-residents/NRIs for acquisition of shares by way of transfer :PROI (other than NRIs and erstwhile OCBs) can transfer shares / convertible debentures by way of gift or sale to any PROI including NRI - Approval required as per Sector
 - NRIs may transfer shares of convertible debentures as sale of gift to another NRI
 - PROI can transfer any security to a person resident in India as a gift
 - PROI can sell shares or convertible debentures of I Co on a recognised stock exchange in India through a stock broker or merchant banker or SEBI registered merchant banker
 - Person resident in India can transfer shares / convertible debentures (including subscribers shares) of an I Co by way of sale under a private arrangement to a PROI, subject to Para 5.2
 - General permission covers transfer by resident to non-resident of shares / convertible debentures under automatic route and transfer by way of buyback / capital reduction to Non-Resident by I Co
 - Reporting in Form FC-TRS within 60 days
 - KYC applicable on funds received in India

FDI – Transfer of Shares from Non-Resident to Resident not requiring approval of RBI

- 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:
 - Original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps and other conditions (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
 - 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
 - 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
- Where the transfer of shares requires the prior approval of the Government conveyed through FIPB/ Individual Department as per the extant FDI policy provided that:
 - the requisite approval of the FIPB/ Individual Department of Ministry has been obtained; and
 - the transfer of shares adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time

FDI – Transfer of Shares from Resident to Non-Resident not requiring approval of RBI

- 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.
- Where the transfer of shares does not meet the pricing guidelines under the FEMA, 1999 provided that:
 - 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.;
 - 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
 - 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.
- Where the investee company is in the financial sector provided that:
 - 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
 - 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.

FDI – Transfer of Shares between Resident to Non-Resident payment

49

- Transfer of shares between resident buyer and non-resident seller or vice-versa
- Not more than 25% of the consideration can be paid by the buyer on a deferred basis within a period not exceeding 18 months from the date of the transfer agreement
- If agreed between the Parties, an Escrow account can be opened for not more than 25% within 18 months
- If total consideration is paid, an indemnity bond may be furnished by the Seller for an amount not more than 25% not exceeding 18 months from the date of payment of full consideration
- Consideration paid must be compliant with applicable pricing guidelines

FDI – Conversion of ECB to Equity

50

- General Conditions:
 - All requests for conversion should be accompanied by special resolution of the Company;
 - Government's approval subject to pricing guidelines of RBI and appropriate tax clearance
- I Cos granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/ CDs / CCPS, subject to:
 - Activity under Automatic Route for FDI or Government approval has been obtained;
 - Foreign Equity after conversion within sectoral cap, if any;
 - Pricing of shares is as follows:
 - When shares are listed, as per SEBI Guidelines;
 - When shares are not listed, fair Valuation by SEBI Registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing guidelines
 - Compliance with other applicable statutes;
 - ECBs, due for payment or not, secured/unsecured loans availed from non-resident collaborators

FDI – Shares against technical know-how fee, royalty

51

- General permission 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 and tax laws
- Equity shares issued against any other funds payable by investee company, not requiring permission of the GoI or the RBI permitted, provided that:
 - In accordance with extant FDI Guidelines on sectoral caps, pricing guidelines;
 - Explanation: Issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of FEMA 20 or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines;
 - The issue of equity shares subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes

FDI – Equity shares under FDI Policy under Government route

52

- Import of capital goods/ machinery/ equipment (excluding second-hand machinery):
 - Any import of capital goods/machinery etc., made by a resident in India, in accordance with the Export/Import Policy of GoI/as defined by DGFT/FEMA provisions relating to imports
 - Application should clearly indicate beneficial ownership and identity of Importer Company and overseas entity.
 - 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
- Pre-operative/pre-incorporation expenses (including payments of rent etc.):
 - Submission of FIRC for remittance of funds;
 - Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor;
 - 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;
 - Applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company

FDI other than direct investment – Rights / Bonus Shares and Warrants

53

- I Cos can freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap
- Original shares should have been issued in accordance with FEMR
- To be in accordance with other laws/statutes - Companies Act/ SEBI
- Offer on right basis to the persons resident outside India shall be:
 - Listed shares - price as determined by the company;
 - Unlisted shares - price which is not less than the price at which the offer on right basis is made to resident shareholders
- Prior permission of RBI for Rights issue to erstwhile OCBs
 - Bonus shares can be issued to erstwhile OCBs without the approval of RBI

FDI other than direct investment – Rights / Bonus Shares and Warrants

54

- Additional allocation of rights share by residents to non-residents
 - Existing non-resident shareholders are allowed to apply for additional shares/ FCDs / CCDs / CCPSs over and above their rights share entitlements
 - Investee company can allot additional rights share out of unsubscribed portion, subject to condition that overall issue of shares to non-residents in total paid-up capital < sectoral cap
- Reporting of Rights / Bonus shares in Form FC-GPR
- An I Co may issue warrants to a PROI as per terms and conditions stipulated by the RBI from time to time

FDI other than direct investment – Merger / Demerger / Amalgamation

55

- Acquisition of shares under Scheme of Merger/Demerger/Amalgamation
 - As per Court approved process
 - 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:
 - percentage of shareholding of PROI in transferee or new company does not exceed the sectoral cap, and
 - transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy
 - Approval required if not under automatic route or exceeds sectoral cap
- Transferor / Transferee / New Company not in agriculture, plantation or real estate business or trading in TDRs
- Reporting to the RBI within 30 days with information and confirmation that Court conditions are complied with

FDI other than direct investment – Merger / Demerger / Amalgamation

56

- As per Scheme of Arrangement approved, I Co may issue non-convertible/redeemable preference shares or debentures to non-resident shareholders
 - Original shares / Cs treated as FDI compliant instruments and entitled to hold as per Regulations
 - In accordance with Companies Act
 - I Co has NOC from the Income-tax
 - I Co shall not engage in Prohibited Sector

FDI other than direct investment – ESOP / Share Swap

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- Employees Stock Option Scheme (ESOPs) / Sweat Equity
- I Co may issue ESOP / Sweat Equity to employees/directors or employees/directors of its holding company or JV or WOS who are resident outside India:
 - Scheme approved by SEBI and Companies Act
 - As per Sectoral cap
 - Approval route shall require approval of GoI
 - To citizen of Bangladesh / Pakistan requires prior approval
 - Reporting in Form-ESOP within 30 days to the RBI
- Share Swap
 - Valuation by Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country, irrespective of the amount
 - Approval of Government a prerequisite for investment by swap of shares for sector under Government approval route
 - No approval of the Government for investment in automatic route sectors

FDI – Transfer of Capital Instruments requiring approval of RBI

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- Transfer of capital instruments from resident to non-residents by way of sale where:
 - 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 5.2.
 - 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
- Transfer of shares from NRI to Non-Resident

FDI – Transfer of Capital Instruments requiring approval of RBI

59

- Transfer of any capital instrument, by way of gift by PRI to PROI – Application should confirm the following:
 - 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.
 - Gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
 - Applicable sectoral cap limit in the Indian company is not breached.
 - Transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 2 (77) of Companies Act, 2013
 - 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.
 - Such other conditions as stipulated by Reserve Bank in public interest from time to time.

Pledge of Shares

- Promoter of I Co (Borrowing Company), which has raised ECB, may pledge shares of the borrowing company / associate companies for securing the ECB, provided that NOC is obtained from AD Bank which will be provided after having satisfied itself that ECB is as per extant FEMA Regulations and that:
 - loan agreement has been signed by both the lender and the borrower,
 - there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and
 - LRN has been obtained
- Conditions
 - Period shall be co-terminus with the maturity of the underlying ECB;
 - in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;
 - 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.

Pledge of Shares

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- Non-residents holding shares of an I Co can pledge shares of listed companies in favour of AD bank in India to secure credit facilities extended to the resident investee company for bonafide business purpose, subject to the following conditions:
 - in case of invocation of pledge, transfer of shares as per FDI policy at the time of creation of pledge;
 - submission of a declaration/ annual certificate from Statutory Auditor of investee company that the loan proceeds will be / have been utilized for the declared purpose;
 - I Co follows relevant SEBI disclosure norms
 - pledge of shares in favour of Bank subject to Section 19 of the Banking Regulation Act, 1949

Pledge of Shares

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- Non-residents holding shares of an I Co can pledge shares in favour of an overseas bank to secure credit facilities being extended to non-resident investor/non-resident promoter of I Co or its overseas group company, subject to the following:
 - loan is availed from an overseas bank for genuine business purposes overseas and not for any investments either directly or indirectly in India;
 - overseas investment should not result in any capital inflow into India;
 - in case of invocation of pledge, transfer of shares as per FDI policy at the time of creation of pledge;
 - 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

Reporting of FDI and transfer of shares

- An Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.
- 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.
- 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 (Section-4). 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. However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank. 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.

Reporting of Non-Cash, FCCB and DR

- 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, company shall report conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2, 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 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
- Reporting of FCCB/DR Issues
 - The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' as given in Section-5 within 30 days of close of the issue/ program.

Remittance and Repatriation

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- Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies:
 - 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.
 - AD Category-I bank allow 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 made as per prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department
- Remittance on winding up/liquidation of Companies
 - AD Category-I banks 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, , as applicable. AD Category-I banks shall allow the remittance provided the applicant submits:
 - No objection or Tax clearance certificate from Income Tax Department for the remittance.
 - Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
 - Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.

Remittance and Repatriation

- In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceeding pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.
- 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.
- 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.

Schedule 2 – Shares / Debentures of Indian Companies by a Registered FII under Portfolio Investment Scheme

67

- Eligible Entities: Indian Companies
- Eligible Investors: Registered FII under Portfolio Investment Scheme
- Investment in shares / debentures of an Indian Company through registered broker on recognised stock exchange in India under Portfolio Investment Scheme
- Remittance: Through normal banking channels / funds held in an account maintained with designated branch of AD Bank
- Total holding by each FII shall not exceed 10% of total equity capital or 10% of series of debentures and total holding of all FIIs cannot exceed 24% of total equity capital or series of convertible debentures
 - 24% can be increased by Special Resolution of Shareholders
 - Primary and secondary market purchase shall be included
 - Offshore Funds, GDRs and Euro-Convertible Bonds shall not be included
- Reporting by I Co - shares at Item 5 of Form FC-GPR
- Reporting by Custodian Bank - Daily statement in respect of transactions (except derivative trades) to be submitted by custodian bank and uploaded to the OFRS website

Schedule 2 – Shares / Debentures of Indian Companies by a Registered FII under Portfolio Investment Scheme

68

- RFII can purchase shares / convertible debentures or warrants of I Co through private placement subject to ceiling above and subject to:
 - Public Offer – At price to Residents;
 - Private Placement – Pricing Methodology SEBI or Merchant Banker / CA at internationally accepted valuation methodology
- RFII can undertake short selling and lending and borrowing subject to RBI and SEBI
- RFII or NRI may purchase, hold or sell Indian DRs of eligible companies resident outside India and issued in the Indian capital market subject to Para 2 of Schedule 7
- FPI includes RFPI and QFI
- Can open Foreign Currency Account / Special Rupee Account with designated branch of an AD Bank subject to:
 - Account funded by remittance from abroad through normal banking channels or credit of sale proceeds net of tax of the shares / convertible debentures sold on the Stock Exchange
 - Funds utilised for purchase of shares / CDs or warrants as per this Scheme or remittance outside India
 - Funds can be transferred within accounts
 - Non-interest accounts

Schedule 2 – Shares / Debentures of Indian Companies by a Registered FII under Portfolio Investment Scheme

69

- Remittance of sale proceeds
 - Allowed net of tax to be remitted or credit to the Foreign Currency Account or Special Rupee Account
- Investment by certain other Investors
 - A domestic asset management company or portfolio manager, registered with SEBI as FII for managing the fund of a sub-account may make Investment under the Scheme on behalf of-
 - PROI who is citizen of a Foreign State;
 - A body corporate registered outside India
 - Investment by funds received through normal banking channels
 - Investments cannot exceed 5% of equity capital / convertible debentures and cannot exceed 24% as mentioned

Schedule 2A – Shares / Debentures of Indian Companies by a Registered FPI under Foreign Portfolio Investment Scheme

70

- Eligible Entities: Indian Companies
- Eligible Investors: Registered FPI under Foreign Portfolio Investment Scheme ('FPIS')
- Investment in shares / debentures of an Indian Company through registered broker on recognised stock exchange in India under Portfolio Investment Scheme
- Remittance: Through normal banking channels / funds held in an account maintained with designated branch of AD Bank
- Total holding by each RFPI shall not exceed 10% of total equity capital or 10% of series of debentures and total holding of all FIIs cannot exceed 24% of total equity capital or series of convertible debentures
 - 24% can be increased by Special Resolution of Shareholders
 - Primary and secondary market purchase shall be included
 - Offshore Funds, GDRs and Euro-Convertible Bonds shall not be included
 - Holding of RFPI and Deemed RFPI shall be included

Schedule 2A – Shares / Debentures of Indian Companies by a Registered FPI under Foreign Portfolio Investment Scheme

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- RFPI can purchase shares / CDs or warrants of I Co through private placement subject to ceiling and subject to pricing guidelines:
 - Public Offer – At price to Residents;
 - Private Placement – Pricing Methodology SEBI or Merchant Banker / CA at internationally accepted valuation methodology
- RFII can undertake short selling and lending and borrowing subject to RBI and SEBI
- Can open Foreign Currency Account / Special Rupee Account with designated branch of an AD Bank subject to:
 - Account funded by remittance from abroad through normal banking channels or credit of sale proceeds net of tax of the shares / convertible debentures sold on the Stock Exchange
 - Funds utilised for purchase of shares / CDs or warrants as per this Scheme or for remittance outside India
 - Funds can be transferred within accounts and non-interest accounts Remittance of sale proceeds
 - Allowed net of tax to be remitted / credit to Foreign Currency Account or Special Rupee Account

Schedule 5 – Acquisition of Securities by a Person Resident Outside India

- Eligible Investors: Registered FIIs, Qualified Foreign Investors (‘QFIs’), other Non Resident Investors, RFPIs, NRIs, Foreign Central Banks
- Registered FIIs
 - Repatriation basis
 - Securities – Government securities / treasury bills, NCDs / Bonds of I Cos, CPs by I Cos, units of domestic mutual funds, Security Receipts by ARCs upto 100% of each tranche, Perpetual Debt Instruments (shall not exceed 10% each and 49% total), NCDs / Bonds by Infrastructure Finance Companies by RBI, Rupee denominated bonds by Infrastructure Debt Funds, credit enhanced bonds, listed Non-Convertible / Redeemable Preference Shares, Securitised Debt Instruments
 - Derivative contracts collateral – Above securities can be utilised
- Qualified Foreign Investors
 - Repatriation basis
 - Equity schemes of SEBI registered domestic mutual funds, debt schemes of SEBI registered domestic mutual funds investing in infrastructure, any scheme holding at 25% of assets (equity or debt) in infrastructure defined as per ECB Guidelines
 - Government securities, commercial papers, SRs, Perpetual Debt Instruments (shall not exceed 10% each and 49% total), NCDs / Bonds by Infrastructure Finance Companies by RBI, Rupee denominated bonds by Infrastructure Debt Funds, credit enhanced bonds, listed Non-Convertible / Redeemable Preference Shares, NCDs / Bonds by NBFCs

Schedule 5 – Acquisition of Securities by a Person Resident Outside India

- Other Non Resident Investors
 - Long term Investors being Sovereign Wealth Funds, Multilateral agencies, endowment funds, insurance funds, pension funds registered with SEBI as eligible investors in Infrastructure Debt Funds may purchase on repatriation basis Rupee denominated bonds/ units by Infrastructure debt funds
 - Long term Investors being Sovereign Wealth Funds, Multilateral agencies, endowment funds, insurance funds, pension funds, Foreign Central Banks registered with SEBI may purchase on repatriation basis dated Government Securities, CPs, units of domestic mutual funds and other specified instruments of investment
- RFPIs
 - Repatriation basis
 - Securities – Government securities / treasury bills, NCDs / Bonds of I Cos, CPs by I Cos, units of domestic mutual funds, Security Receipts by ARCs upto 100% of each tranche, Perpetual Debt Instruments (shall not exceed 10% each and 49% total), NCDs / Bonds by Infrastructure Finance Companies by RBI, Rupee denominated bonds by Infrastructure Debt Funds, credit enhanced bonds, listed Non-Convertible / Redeemable Preference Shares, Securitised Debt Instruments
 - Derivative contracts collateral – Above securities can be utilised

Schedule 5 – Acquisition of Securities by a Person Resident Outside India

- NRIs
 - Repatriation basis
 - Securities – Government dated securities, bonds
 - Non-repatriation basis
 - Units of domestic mutual funds, units of Money Market Mutual Funds in India or NPS, listed non-convertible/ redeemable preference shares or debentures
- Foreign Central Banks
 - Purchase and Sell Government dated securities / treasury bills in secondary market as per conditions of the RBI
- PROIs may sell / redeem securities purchased under Schedule 5 subject to conditions as per SEBI and RBI
- Remittance of proceeds permitted net of taxes outside India or to account maintained in India

FVCI

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- SEBI Registered Foreign Venture Capital Investor (FVCI) can contribute 100% of the capital of an I Co in any activity mentioned in Schedule 6 including startups irrespective of the sector, under automatic route
 - Policy applicable to FVCI summarised in RBI AP (DR) Circular No. 7 dated 20-10-2016
 - Can invest in domestic venture capital fund registered with SEBI or Category 1 AIF subject to FDI Policy and sectoral caps
 - Startup means an entity incorporated in India not prior to five years, annual turnover not exceeding Rs. 25 crores in any preceding year, working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or IPR, should not have been formed by splitting up or reconstruction of a business already in existence
 - Definition under FEMR different, but not principally different
 - Investment can be made in equities or equity linked instruments or debt instruments (including start-ups and if a startup is partnership firm or LLP, investment in capital or profit-sharing arrangement) or units issued by VCF / Category-I AIF by purchase by private arrangement either from the issuer of the security or from any other person holding the security or on a recognised stock exchange
 - May set up domestic asset management company to manage its investments
 - Are allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations

Registered Foreign Venture Capital Investor – Schedule 6 of FEMR

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- Eligible Investors: Registered FVCI
- Repatriation basis
- Securities :
 - Equity or equity linked instruments or debt instruments of an I Co as per sectoral caps
 - Equity or equity linked instruments or debt instruments of an I Co of a start up irrespective of the sector
 - Units of a VCF or Category 1 AIF
- Primary or Secondary Purchase is allowed
- Inward remittance through normal banking channels / sale proceeds or income from securities
- Foreign Currency Account / Rupee Account can be opened with AD Bank
- Can sell to any person resident or non-resident at a price that is mutually accepted to the parties
- Reporting as per prescribed format of the RBI
- Sectors- Biotechnology, IT related to hardware and software development, Nanotechnology, Seed research and development, Research and development of new chemical entities in pharmaceutical, Dairy, Poultry, Production of Bio-fuels, Hotel-cum-convention centers with seating capacity of over 1,000, Infrastructure

Schedule 7 – Indian Depository Receipts by Eligible Companies Resident outside India

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- Eligible Investors: Qualified Foreign Investors
- Eligible Investee: Companies resident outside India
- Security – Indian Depository Receipts ('IDRs') through a Domestic Depository
- Compliance with Companies (Issue of IDRs) Rules, 2004
- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- IDRs denominated in INR only
- By Financial / Banking Companies having presence in India requires prior approval of the sectoral regulators
- NRI – Purchase out of NRE / FCNR (B) Accounts
- Limited two way fungibility scheme
- Not redeemable into underlying equity shares for 1 year
- Redemption / Conversion of IDRs into underlying equity shares in compliance with Regulations

Schedule 8 – Scheme for Investment by Qualified Foreign Investors in Equity Shares

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- Eligible Investors: Qualified Foreign Investors
- Eligible Investee: Indian Companies
- Investment through SEBI Registered Qualified Depository Participants ('QDPs')
- Security – Equity shares of listed Indian Companies through registered stock brokers on RSEs, public offer, rights, bonus, split, consolidation on account of restructuring or corporate actions
- Sale on RSEs, open offer, buyback
- Pricing – Applicable SEBI Guidelines
- Payment – Single Non-interest Rupee Account to be funded by inward remittance through normal banking channels or credits on sale of securities
- Demat account can be opened
- Investment limits – Individual 5% Aggregate 10% of paid up Capital of Indian Company and sectoral caps
- Onus on Indian Company and AD Bank for reporting
- KYC

Investee Entities – Investment Vehicle as per Schedule 10 of FEMR

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- Eligible Investors
 - PROI (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including RFPI and NRI
- Eligible Entities:
 - An entity being ‘investment vehicle’ registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000
- Investment in units of Investment Vehicles
- Remittance: Through normal banking channels / debit to NRE or FCNR Account
- Downstream investment shall be regarded as Foreign Investment if Sponsor or Manager or Investment Manager is not Indian ‘owned and controlled’ of Regulation 14 – SEBI shall determine Indian owned and controlled for entities other than Companies and LLPs

Investee Entities – Investment Vehicles

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- Control of AIF should be with Sponsors, Managers and Investment Managers
 - If Individuals, they should be Resident Indian Citizens
- Extent of Foreign Investment in the corpus of the Investment Vehicle will not be a factor to determine whether downstream investment is foreign investment
- Downstream Investment will have to conform to sectoral caps and conditions as per FDI Policy or Schedule 1 of the Principal Regulations
- Downstream Investment in a LLP by an Investment Vehicle should be as per Schedule 9 as well as FDI Policy for Foreign Investment in LLPs
- An AIF Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a Registered FPI is allowed to invest under the Principal Regulations
- Reporting
 - In the formt as prescribed by the RBI or SEBI
- FDI in other entities is not permitted

Others

- Remittance receiving AD Category-I bank is different from the AD Category-I bank handling the transfer transaction, KYC check should be carried out by 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
- AD Category-I banks have general permission to open Escrow account and Special account of non-resident corporate for open offers/exit offers and delisting of shares as per SEBI Takeover Code and SEBI Regulations and Companies Act
- AD Category-I banks are allowed 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 terms and conditions specified by RBI
- SEBI authorised DPs permitted to open and maintain, without prior approval of RBI, Escrow accounts for securities subject to the terms and conditions as specified by RBI
- 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

Indirect Investments

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- Provisions as per Regulation 14 of FEMR and Paragraph 3.8 and Annexure 5 of Consolidated FDI Policy
- Foreign Investment can be direct as well as indirect
 - ▣ Indirect Investment means investment by Indian Investing Company/LLP which has foreign investment in it ('IIE')
- Total Foreign Investment ('TFI') = Direct Investment ('FDI') + Indirect Foreign Investment ('IFDI')
- Investment in an Indian Investee Entity ('Investee Co') can be made by both NR and Resident Indian Entities ('RIEs')
- NR Investment in an Investee Co is FDI
- Investment by RIEs could be comprised of both Resident and Non-Resident Investment
- An Investee Co would have IFDI if IIE has foreign investment in it
- IFDI can be cascading investment through multi-layered structure

Indirect Investments - Definitions

- ‘Ownership and control’ shall mean and include:
 - 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. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately ‘owned and controlled by resident Indian citizens’ and such resident Indian citizens and entities have majority of the profit share.
 - A Company owned by non-residents shall mean an Indian Company that is not owned by resident Indian citizens
 - ‘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. For the purposes of Limited Liability Partnership, ‘control’ will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.
- ‘Downstream investment’ means indirect foreign investment, by an eligible Indian entity, into another Indian company/LLP, by way of subscription or acquisition

Indirect Investments - Definitions

- ‘Direct Foreign Investment’ shall mean investment received by an Indian Company from non-resident entities regardless of whether the said investments have been made under Schedules 1, 2, 2A, 3, 6 and 8 of the Notification FEMA.20/2000 as amended from time to time
- ‘Indirect Foreign Investment’ means entire investment in other Indian Companies by an Indian Company (‘IC’), having foreign investment in it provided
 - ▣ (a) IC is not owned and controlled by Resident Indian Citizens and / or Indian Companies which are owned and controlled by Resident Indian Citizens; or
 - ▣ (b) Where IC is owned or controlled by non-residents
 - ▣ IFDI in 100% owned subsidiaries (‘WOS’) of operating-cum-investing/ investing Companies will be limited to the foreign investment in the operating-cum-investing / investing company
- ‘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
- ‘Resident Indian Citizen’ shall be interpreted in line with the definition of PRI as per FEMA read in conjunction with the Citizenship Act

Indirect Investments

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- TFI includes sum of all investment made under the following schedules of FEMR:
 - Schedules 1, 2, 2A, 3, 6, 8, 9, 10
 - Any equity instrument by a PROI resulting from conversion of a debt instrument would be included
- TFI does not include investment made under the following schedules of FEMR, being debt / on non-repatriation basis:
 - Schedules 4, 5, 7, 11
 - FCCBs and DRs having underlying securities as per Schedule 5, being debt, shall not be included
 - Schedule 11 downstream Investment by Invt Vehicle considered as Foreign Investment if Sponsor / Manager / Investment Manager is not Indian ‘owned and controlled’
- Methodology will apply at every stage of investment
- Downstream Investment (‘DI’) by Indian entities
- TFI cannot exceed sectoral cap
- IIE making downstream investment required to comply with sectoral caps

Calculating Indirect Investments

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- The foreign investment through IIE would not be considered for calculation of IFDI if IIE which are ‘owned and controlled’ by Resident Indian citizens
 - ▣ If above is not fulfilled, or if IIE is owned or controlled by ‘non-resident entities’, entire investment by IIE into Investee Co would be considered as IFDI
 - ▣ Exception: IFDI in only WOS of operating-cum-investing/investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company
 - ▣ DI of WOS of H Co is akin to investment made H Co and DI should be a mirror image of H Co - Only for cases where 100% Capital of Investee Co is held by H Co
- DI by an Investment Vehicle shall be regarded as foreign investment if Sponsor/ Manager/ Investment Manager is not Indian ‘owned and controlled’ as per Regulation 14
 - ▣ Sponsor / Manager / Investment Manager other than Companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled

Calculating Indirect Investments - Illustration

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- Calculation of IFDI for X Co which has investment through an IIE Y Co having foreign investment
 - Where Y Co has foreign investment less than 50%- X Co would not be taken as having any IFDI through Y Co (since not owned and controlled)
 - Where Y Co has foreign investment of 75% and invests 26% in X Co, entire 26% would be IFDI in X Co
 - Where Y Co has foreign investment of 75% and has 80% in X Co, IFDI in X Co would be 80%
 - Where Y Co has foreign Investment of 75% and X Co is a WOS of Y Co, then only 75% would be IFDI and the balance 25% would be resident held equity
- IFDI in X Co would be computed in the ratio of 75:25 in the total investment of Y Co in X Co
- The above methodology of calculation would apply at every stage of investment in Indian companies and thus to each and every Indian company.

Downstream investment by an eligible Indian entity which is not owned and/or controlled by resident entity/ies

- Downstream investment by an eligible Indian entity, 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
- 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.

Downstream investments by eligible Indian entities/LLPs, not owned / controlled by Resident Entities - Conditions

- To notify SIA, DIPP and FIPB of its DI 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);
- Downstream investment by way of induction of foreign investment in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a shareholders agreement, if any;
- Issue/transfer/pricing/valuation of capital shall be in accordance with applicable SEBI/RBI guidelines;
- IIEs making DIs would have to bring in requisite funds from abroad and not leverage funds from the domestic market
- This does not preclude downstream companies/LLPs, with operations, from raising debt in the domestic market
- Downstream investments through internal accruals are permissible, subject to provisions of paragraphs 3.8.3 and 3.8.4.1. For the purposes of foreign investment policy, internal accruals will mean as profits transferred to reserve account after payment of taxes

Indirect Investments – Conditions

- Complete information on Foreign Investment including ownership in IIE and Investee Co and control to be furnished to GOI for seeking approval
- Sector requiring Government approval and where there are any inter-se agreements between/amongst shareholders which have an effect on the appointment of BOD or voting rights disproportionate to shareholding or any incidental matter, such agreements will have to be informed to the approving authority. Approving authority will consider inter-se agreements for determining ownership and control when considering the case for approval of foreign investment.
- Sectors attracting sectoral caps, 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

Indirect Investments – Conditions

- In the I& B sector where the sectoral cap is up to 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
- If a declaration is made by persons 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
- Applicable to all sectors, except where specified in a statute or rule
- Does not apply to Insurance Sector and DI by an Investment Vehicle

Downstream Investments by Investment Vehicle

- Ownership and control determined as per the extant FDI policy
- AIF is a pooled investment vehicle. ‘Control’ of the AIF should be in the hands of ‘sponsors’ and ‘mangers/investment managers’, general exclusion of others. In case the ‘sponsors’ and ‘managers/investment managers’ of the AIF are individuals, for the treatment of downstream investment by such AIF as domestic, ‘sponsors’ and ‘managers/investment managers’ should be resident Indian citizens
- Extent of foreign investment in corpus will not be a factor to determine as to whether DI of Investment Vehicle is foreign investment or not
- DI by Investment Vehicle as per Sectoral Caps and as per Schedule 9
- AIF Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a RFPI is allowed to invest under the principal Regulations.
- Reporting as prescribed by the RBI
- Any foreign investment already made as per guidelines prior to 13-02-2009 (Press note 2 of 2009) would not require any modification to conform to these guidelines

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)

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- Will require prior Government/ Concerned Ministry approval, regardless of the amount of foreign investment
- Foreign investment into NBFCs, carrying on activities approved for FDI, subject to the conditions specified in paragraph 5.2.26
- Core Investment Companies (CICs) will follow RBI's Regulatory Framework for CICs
- Activities under automatic route and without foreign investment linked performance conditions, I Co which does not have any operations and does not have DI is permitted to have infusion of foreign investment under automatic route
 - Approval of the Government required for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount of foreign investment. When company commences business(s) or makes DI, comply Sectoral Caps

Penalties - Adherence to Guidelines/Orders and Consequences of Violation

- FDI is a capital account transaction - any violation of FDI regulations covered by penal provisions
- RBI administers the FEMA and Directorate of Enforcement under MOF is the authority for the enforcement of FEMA. Directorate takes up investigation in any contravention of FEMA.
- Penalties
 - Any contravention by a person of FDI Regulations - 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.
 - A person commits 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.
 - Any Adjudicating Authority adjudging any may, if he thinks fit in addition to any penalty, 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

Adjudication and Appeals

- MOF as per 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
- Reasonable opportunity given before imposing any penalty
- CG may appoint an Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority
- Compounding Proceedings
Under Foreign Exchange (Compounding Proceedings) Rules 2000, CG may appoint 'Compounding Authority' an officer either from Enforcement Directorate or RBI
- Compounding Authorities are authorized to compound amount involved in the contravention to the Act made by the person, if 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
- May call for information and order within 180 days

Source

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सत्यमेव जयते

Department of Industrial Policy and Promotion
Ministry of Commerce and Industry
Government of India



Income Tax Department

Department of Revenue, Ministry of Finance, Government of India



Foreign Direct Investment and Indirect Foreign Investments

Queries

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**YOUR
QUESTIONS
PLEASE !!!**



Thank you!!!

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Isha Sekhri