



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

For

December, 2022 Examination

**ECONOMIC, BUSINESS AND COMMERCIAL
LAWS**

MODULE 2

PAPER 7

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Content

Sl No	Lesson Number & Name	Page Number
2	Lesson 5 Foreign Direct Investment Policy & Procedure	3
3	Lesson 12 Competition Act, 2002	6

Lesson 5

Foreign Direct Investment Policy & Procedure

Review of FDI Policy for permitting foreign investment in Life Insurance Corporation of India (LIC) and other modifications for further clarity of the existing FDI Policy.

The Government of India has reviewed the extant FDI policy for permitting foreign investment in Life Insurance Corporation of India (LIC) and other modifications for consistency and further clarity of the existing FDI Policy. Accordingly, the following amendments have been made under the Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy):

Sector/Activity	% of Equity FDI cap	Entry Route
Life Insurance Corporation of India	20%	Automatic

Conditions applicable to Indian insurance companies and intermediaries or insurance intermediaries:

(a) No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed seventy-four percent of the paid-up equity capital of such Indian Insurance company.

(b) The foreign investment up to seventy-four percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.

(c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license/approval from the Insurance Regulatory and Development Authority of India for undertaking insurance and related activities.

(d) (I) In an Indian Insurance Company having foreign investment,

- i. a majority of its directors;
- ii. a majority of its Key Management Persons; and
- iii. at least one among the Chairperson of its Board, its Managing Director and its Chief Executive Officer shall be Resident Indian Citizens.

(II) An Indian Insurance company having foreign investment shall comply with the provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time and applicable rules/regulations notified by the Department of Financial Services/Insurance Regulatory and Development Authority of India from time to time.

(e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in Chapter-IV, Rule 10 and 11 read with Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time.

(f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.

(g) The foreign equity investment cap of 100 percent shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. The composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries shall be as specified by the concerned regulator from time to time.

(h) The foreign direct investment proposals shall be allowed under the automatic route subject to verification by the Authority and the foreign investment in intermediaries or insurance intermediaries shall be governed by the same terms as provided under rules 7 and 8 of the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time:

Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from their primary (i.e., non-insurance related) business must remain above 50 percent of their total revenues in any financial year.

(i) The insurance intermediary that has majority shareholding of foreign investors shall undertake the following:

- be incorporated as a limited company under the provisions of the Companies Act, 2013;
- at least one from among the Chairman of the Board of Directors or the Chief Executive Officer or Principal Officer or Managing Director of the insurance intermediary shall be a resident Indian citizen;
- shall take prior permission of the Authority for repatriating dividend;
- shall bring in the latest technological, managerial and other skills;
- shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority;
- shall make disclosures in the formats to be specified by the Authority of all payments made to its group or promoter or subsidiary or interconnected or associate entities;
- composition of the Board of Directors and key management persons shall be as specified by the concerned regulators.

Conditions applicable to the Life Insurance Corporation of India (LIC) are as follows:

- (a) Foreign investment in LIC shall be subject to compliance with the provisions of the Life Insurance Corporation Act, 1956, as amended from time to time (LIC Act) and such provisions of the Insurance Act, 1938, as amended from time to time, as are applicable to LIC as per the provisions of Section 43 of the LIC Act.
- (b) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in Chapter-IV, Rule 10 and 11 read with Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time & any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations shall also apply to LIC .

Lesson 12

Competition Act, 2002

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2022

The Competition Commission of India (CCI) has notified the revised format of Form II (i.e. long form of merger notification) vide the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2022 dated 31st March 2022.

The amendment revised the content and format of information that the parties to a combination uses to file under section 6(2), where the post-combination market share exceeds 15% in cases of horizontal overlap and 25% in cases of vertical interface. Generally, these are the cases requiring detailed examination to assess the likely effect of the combination on competition in India.

The amendment to the Form – II is a part of series of measures undertaken by the CCI towards ease of doing business, reducing the compliance burden on the parties and making the assessment of the combination more objective and focussed. Previously, the CCI had also amended the Form – I (i.e. short form of merger notification) in August 2019. This form is used by parties to provide information while seeking approval of the Commission for a combination, where the combined market share post-merger is not significant. Amendment to Form – I was followed by detailed guidance notes to Form – I issued in March 2020 that provided clarifications on the nature and scope of information to be filed and elaborated criterion for availing green channel by the parties.

The amendment to the Form – II is aimed to remove duplicity and limit the information requirement so that they remain focused and relevant to the objective of assessment of a merger, suitably clustering the information on common subject, streamlining the flow of information for better navigation and appreciation of material furnished in the notification. Further, the template of revised long form is based on the structure of short form so as to have modular formats of merger notification that would reduce the time and efforts required to move from the short form to the long form. Further, revision in the long form has been undertaken without sacrificing the cause of merger regulation. Revised long form is intended to strike a balance between facilitation and enforcement functions and create a culture of compliance. The CCI also intends to issue guidance notes for revised Form II in due course. This guidance notes will elaborate upon the queries in revised Form II and include certain queries from existing Form II that are explanatory in nature.

Note: Students appearing in December, 2022 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, ICSI & or other authority till 31st May, 2022.
