



'ICSI House', 22 Institutional Area, Lodi Road, New Delhi-110003, India.
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CS Update

April 01, 2011

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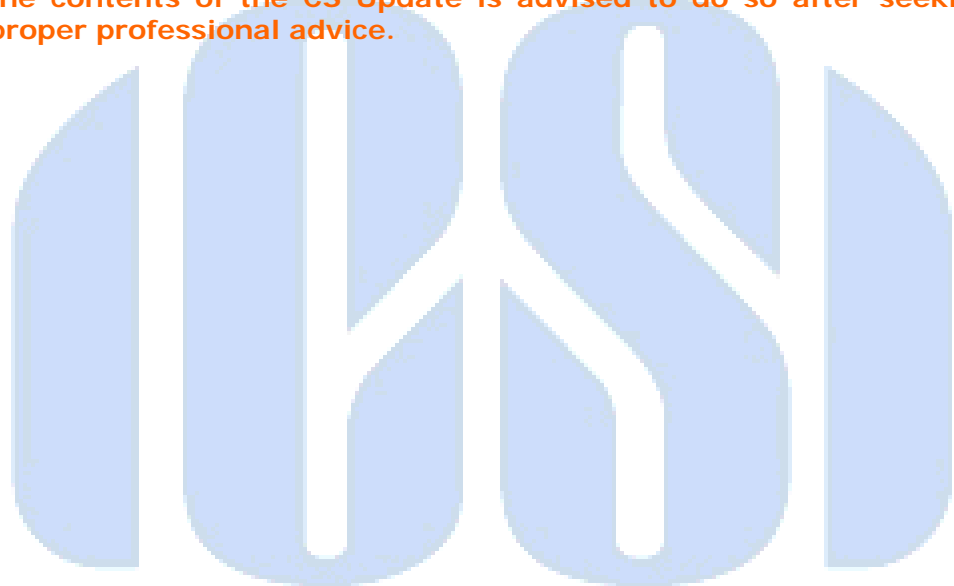
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FROM BEST TO BEST





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POINT OF TAXATION RULES, 2011

1st April, 2011

Dear Professional Colleagues,

Sub: Point of Taxation Rules, 2011

According to the Service Tax Rules, 1994 read with section 68 of the Finance Act, 1994, the Service Tax was payable on 'receipt of payment' for the service rendered. The Point of Taxation Rules, 2011 notified vide Notification No. 18/2011-Service Tax dated 1st March, 2011 shifted the point of taxation from 'cash' to 'accrual' basis.

The Institute submitted a representation to Shri Pranab Mukherjee, Hon'ble Finance Minister for reconsidering the change in 'point of taxation' from 'cash' to 'accrual' basis.

We are pleased to inform that the Point of Taxation Rules, 2011 have been amended vide Notification No. 25/2011 dated 31.03.2011 and accordingly, the 'point of taxation' for the services being rendered by *inter alia* Company Secretaries in Practice as individuals or proprietary firms or partnership firms shall be the date on which payment is received. The copy of the Notification No. 25/2011 dated 31.3.2011 may be seen at <http://www.servicetax.gov.in/st-notfns-home.htm>

Regards,

CS N.K. Jain
Secretary & CEO



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12th NATIONAL CONFERENCE OF PRACTICING COMPANY SECRETARIES

The 12th National Conference of Practicing Company Secretaries is scheduled to be held in July, 2011 at Ooty, Tamil Nadu.

Located in the midst of four high hills; Doddabetta, Snowdon, Elk hill and Club Hill in the Nilgiris, Ooty is a picturesque hill station that is pleasant all through the year. The time of the National Conference has very aptly been kept in July so as to enable our professional colleagues to escape into the verdant hills, the lush green valleys and to admire the pristine natural beauty of the hill resort of Ooty which offers the tiered souls of all ages a chance to resume their affair with Nature, to whom they truly belong. The National Conference would surely be a rejuvenating experience for one and all. So come and embrace the tranquility and solace that Ooty has to offer.



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39TH NATIONAL CONVENTION OF COMPANY SECRETARIES

SUGGESTIONS ON THEME AND SUB-THEMES

The 39th National Convention of Company Secretaries is scheduled to be held on October 13-15, 2011 at Agra. Suggestions are invited for theme and sub-themes to be deliberated at the National Convention.

The person whose theme alongwith its sub-themes is selected shall get exemption from paying the delegate registration fee for the Convention. The decision of the Institute shall be final in all respects. Interested persons may send their suggestions so as to reach by April 25, 2011 to :

Sutanu Sinha
Director (Academics)
The Institute of Company Secretaries of India
ICSI House, 22, Institutional Area
Lodi Road, New Delhi 110 003
E-mail : sudhir.dixit@icsi.edu - Fax : 011-24645045



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COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES BY THE MEMBERS

The Council of the Institute at its 200th Meeting held on March 18, 2011 at New Delhi amended the Guidelines for Compulsory Attendance of Professional Development Programmes by the Members to provide as under:

1.	Next block of three years	April 01, 2011 to March 31, 2014
2.	Min. number of Programme Credit Hours (PCH) to be acquired by Members in Practice	15 PCH in each year or 50 PCH in a block of three years w.e.f April 01, 2011
3.	Min. number of PCH to be acquired by Members in Employment (i.e. members in whose name Form 32 has been filed to work as Company Secretary under the provisions of Sec. 383A of the Companies Act, 1956)	10 PCH in each year or 35 PCH in a block of three years w.e.f April 01, 2011
4.	Min. number of PCH to be acquired by Members above the age of 60 years	Presently the members of the age of 65 years are not required to obtain PCH. This age limit stands reduced to 60 years and the members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years w.e.f April 01, 2011.
5.	Members failing to obtain the mandatory PCH upto March 31, 2011	Provided with a shortfall upto 10 PCH and required to compensate by obtaining atleast 5 additional PCH on pro rata basis in the first year of the next block of three years commencing from April 01, 2011.
6.	Members who have not obtained any PCH during the block ending on March 31, 2011	Members seeking renewal of CoP to provide an explanation for non compliance with the Guidelines – to be decided on

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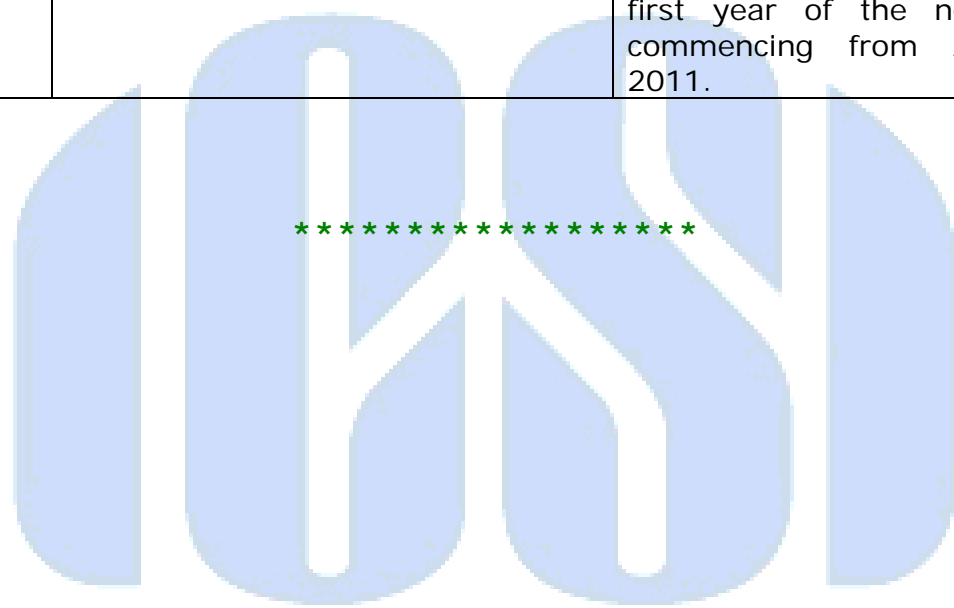
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7.	Carry forward of the excess PCH if the member has already completed the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011	case to case basis. The Guidelines for Compulsory Attendance of Professional Development Programmes by the Members do not provide for carry forward of PCH from one block of three years to the other. If any member had obtained the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011, then in such case the PCH obtained by such member during January – March, 2011 would be treated as having been obtained in the first year of the next block commencing from April 01, 2011.
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ATTENTION PROFESSIONAL COLLEAGUES IN PRACTICE

IMPORTANT DECISIONS AT THE 54TH MEETING OF THE PCS COMMITTEE HELD ON FEBRUARY 17, 2011 AT NEW DELHI

WHETHER A LEGAL OPINION GIVEN BY A COMPANY SECRETARY IN PRACTICE AMOUNTS TO PRACTICE OF LAW

In the light of Section 33 of the Advocates Act, 1961 read with Section 2(2) of the Company Secretaries Act, 1980 and various provisions of the Income Tax Act, 1961 (Sec. 288(2) in particular) Company Secretaries while authorised to appear before the Income Tax Authorities / Income Tax Officer, it is well within their authorization to give opinion on any or all matters pertaining to such authorization including opinion, legal or otherwise.

WHETHER A CLIENT COMPANY CAN PUT A PCS'S NAME ON THEIR WEBSITE AS CORPORATE LEGAL ADVISOR

The member may be allowed to permit the client company to put his name on its website under the following style subject to section 7 of the Company Secretaries Act, 1980:

"Corporate Legal Advisor

Mr. / Ms. XYZ, Company Secretary in Practice (ACS / FCS No. CoP No.....)"

RECOGNITION FOR PCS TO ISSUE ANNUAL ACTIVITY CERTIFICATE AS PROVIDED BY THE RBI IN ITS CIRCULAR NO. 23 DATED 30.12.2009

The RBI had already vide its letter dated April 19, 2001 clarified that all certificates, which a Practising Chartered Accountant can issue as documentary evidence in support of certain applications, may also be



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issued by a Company Secretary in Whole-time Practice under the provisions of the Foreign Exchange Management Act, 1999.

CORE GROUP FOR CAPACITY BUILDING OF CS IN THE AREA OF SMALL & MEDIUM ENTERPRISES

A core group has been constituted for formulating a detailed report on areas of practice for company secretaries in the MSME sector comprising S/Shri Vikas Khare, Atul H Mehta, B Narasimhan, S N Ananthasubramanian, Council Members, The ICSI.

USE OF DESIGNATION BY ASSOCIATES OF A FIRM OF COMPANY SECRETARIES WHO ARE NOT PARTNERS OF THE FIRM

Associates of a Firm of Company Secretaries who are not partners of the firm may sign as Associates of the firm only if the firm takes responsibility for certification of documents certified by the associate.

WHETHER THE MEMBERS ARE ALLOWED TO USE THEIR INITIALS IN DEVANAGRI SCRIPT FOR APPROVAL OF FIRM NAMES

There is no provision in the Act or in the Regulation or in the Guidelines framed by the Council. But as Hindi in Devnagri Script is the national language, the members of the Institute can be permitted to use their initials in 'Devanagri script' for approval of the firm name. However, in sync with the present practice the initials in Devanagri Script should also be accompanied by 'English' for the purpose of verification and records."

USAGE OF THE EXPRESSION "ISO CERTIFIED CS FIRM" BY A FIRM OF COMPANY SECRETARIES

A firm of Company Secretaries can get itself certified but cannot use the expression "ISO certified CS firm" after the firm name.



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PMQ COURSE IN CORPORATE GOVERNANCE

ENHANCEMENT OF FEES

The Council at its 197th Meeting held on December 15, 2010 felt that honorarium be paid to the Guides for dissertation and project report under PMQ Course in Corporate Governance. With a view to meet the expense on honorarium to be paid to the Guide and to meet the increased costs, the Council has decided to enhance the **fee for PMQ Course in Corporate Governance with effect from January 1, 2011 to Rs.25,000/-** for the entire course payable as under :

Rs.12500/- payable at the time of registration for the course.

Rs.12,500/- payable after completion of Part I and before commencement of Part II



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INSTITUTE'S RECENT PUBLICATIONS

- Business @ Governance & Sustainability
- Guidance Note on Board Processes
- Independent Directors-A research Study on Corporate Practice in India
- Corporate Social Responsibility –Research Study of Corporate Practice in India
- DNA of Integrity
- Role of Company Secretaries-A New Perspective
- A Guide to Company Secretary in Practice
- Guidance Note on Related Party Transactions
- Guidance Note on Listing of Corporate Debt
- Guidance Note on Corporate Governance Certificate
- Referencer on Secretarial Audit
- Referencer on Filing and Filing of E-Forms 23AC and 23ACA
- Establishment of Branch, Liaison & Project Offices in India
- Handbook on Mergers, Amalgamation and Takeover

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C-37, Sector 62,
Institutional Area,
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MCA UPDATE





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"REVISED SCHEDULE VI IS APPLICABLE FOR THE FINANCIAL YEAR COMMENCING ON OR AFTER 1.4.2011".

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (ii)]

**GOVERNMENT OF INDIA
Ministry of Corporate Affairs
NOTIFICATION**

New Delhi, dated the 2011

G.S.R (E)- In exercise of the powers conferred by clause(a) of sub-section(1) of section 642 read with sub-section(1) of section 210A and sub-section (3C) of section 211 of the Companies Act, 1956, (1 of 1956), the Central Government hereby makes the following amendment to paragraph 2 of the notification No.447(E) dated the 28th February, 2011.:-

"The notification shall come into force for the Balance Sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1.4.2011".

[F. No. 2/6/2008-C.L-V]

**Avinash K. Srivastava
Joint Secretary**

Note: - The principal notification was published in the Gazette of India, Extraordinary, vide G.S.R. No.414, dated the 21st March, 1961 last amended vide S.O. No.447 (E) dated the 28th February, 2011.



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PROSECUTION OF DIRECTORS – REGARDING

General Circular No. 08/2011

No.2/13/2003/CL- V
Government of India
Ministry of Corporate Affairs

5th Floor, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110001,
Dated the 25th March, 2011

To,

All Regional Directors,
All Registrars of Companies,
All Official Liquidators.

Sub: Prosecution of Directors – Regarding

Sir,

Penal actions for defaults committed under the Companies Act, 1956 are either to be taken against an "officer in default" or a "director(s)" or "persons" as provided in the relevant penal provisions of the Act. Section 5 of the Companies Act, 1956. defines officer in default and the Directors are also liable for compliance of various provisions of the Act.

2. It is noticed that penal actions are also initiated against certain Directors who are not charge with the responsibility, particularly in following cases : --

(a) For listed companies Securities and Exchange Board of India (SEBI) requires nomination of certain Directors designated as Independent Directors.

(b) For public sector undertakings, respective Government nominates Directors on behalf of the respective Government.

(c) Various public sector financial institutions having participation in equity of a company also nominate Directors to the Board of such companies.



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(d) Directors nominated by the Government u/s 408 of the Companies Act, 1956.

In supersession of all earlier circulars, it is clarified that Registrar of Companies should take extra care in examining the cases where above Directors are also identified as Officer in default. No such Directors as indicated above shall be held liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. The Board process includes meeting of any committee of the Board and any information which the Director was authorised to receive as Director of the Board as per the decision of the Board.

No.2/13/2003/CL- V

3. It is further clarified that before taking penal action under the Companies Act, 1956 against the Directors the following compliances should be verified by Registrar of Companies: -

(a) A director resigns and the company does not file Form 32 as required in terms of Section 302(2) of the Act. In case, the director concerned has informed/endorsed a copy of his resignation to the Registrar of Companies, the Registrar should enquire into such cases and try to find out whether such director has actually resigned or not.

(b) In case the status of a director, i.e. whether he is a nominee director or not, is not reflected in the Annual Return or other documents of the company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;

(c) The timing of the commission of offence is also material to identify the director's responsibility; and Form 1AB should also be checked in case any person has been charged by the Board under Section 5(f) with the responsibility of complying with some particular provision or in case any director has been specified by the Board under Section 5(g) of the Act.

(d) Special Directors appointed by BIFR under section 16 (6)(b) of SICA 1985, shall not incur any obligation or liability for anything done or omitted to be done in good faith and in discharge of duties. Hence they shall be excluded



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in the list of officers in default

4. For default u/s 209(5), 209(6), 211 and 212 of the Act, the following persons shall be the 'officers in default for the purpose of prosecution under these provisions :-

(a) Where there is a Managing Director or Manager, the Managing Director or the Manager as the case may be and in addition, the Company Secretary appointed u/s 383A or the person who has been charged with work of maintenance and preparation of Annual Accounts in compliance with aforesaid provisions.

(b) Where there is no Managing Director or Manager, every director and the Company Secretary appointed u/s 383A of the Act .

No.2/13/2003/CL- V

(c) Any persons amongst officers and employees other than Managing Director/Manager/Directors who has been charged by the Managing Director/Manger or Board of Directors with specific responsibility of complying with aforesaid provisions, in addition to Managing Director/Manager/Board of Directors as the case may be.

(d) Directors including Non-Executive Directors, officers and employees not connected with responsibility with the above provisions should not be arrayed as delinquent directors.

(e) While considering the non-executive directors for including in the list of officers in default for a particular violation of the Companies Act, it should be examined whether the violation has taken place with his knowledge attributable through board process, with his consent or connivance and whether he acted diligently or not.

(f) Where prosecution is required to be filed against any Government company, its directors/officers and Member of Parliament and Member of Legislator under the Companies Act, 1956, Registrar of Companies should seek prior authorization of Central Government in terms of Section 621 of the Act

5. There should be proper application of mind on the part of Registrar of Companies in deciding whether a person to be implicated is an 'officer in default' by examining the Annual Return, Form 32(s) and DIN database available in the Registry. The guidelines issued herein above should be applied and wrongful prosecution should be avoided. Wherever the Registrar of Companies have doubt as to whether director/officer can be held



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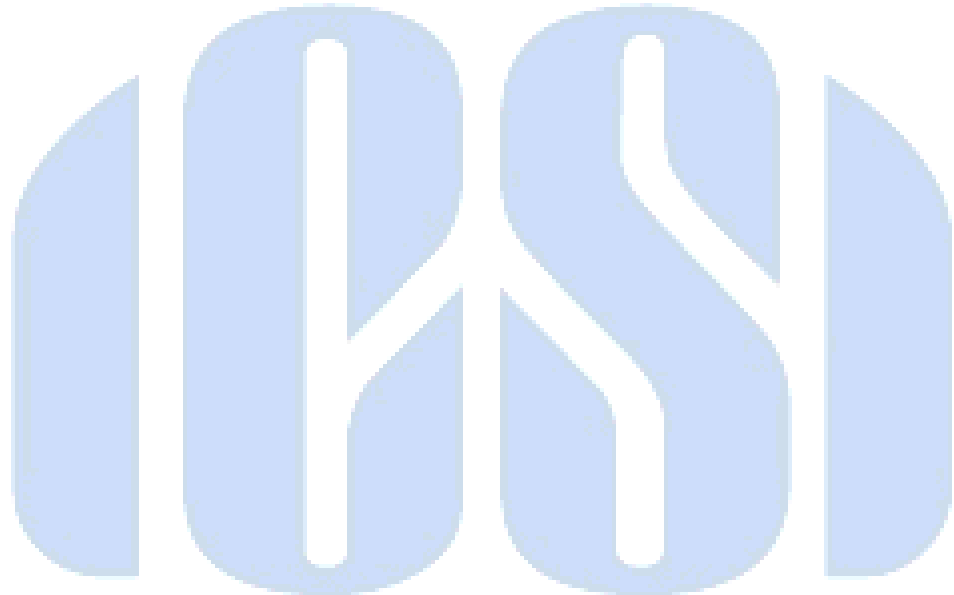


liable after applying the above parameters, they should refer to Regional Director, who shall guide Registrar of Companies in the matter.

6. All cases which are pending against Directors of companies above must be relooked at, based on these parameters and a report must be sent by each Regional Director with specific recommendation in case the proceedings are proposed to be discontinued.

Yours faithfully

(Seema Rath)
Asstt Director
Tel. No. 23387263





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THE COMPANIES (DIRECTOR IDENTIFICATION NUMBER) AMENDMENT RULES, 2011

Central Government notified amendment to Companies (Director Identification Number) Rules, 2006 with effect from 27th March, 2011. The synopsis of amended provisions are as follows:

Rule 3. Application and allotment of Director Identification Number

- As per the amendment to sub-rule (3) the applicant shall download Form No. DIN-1 from the MCA portal, fill-in the required particular therein, scan and attached copies of the prescribed documents, namely- photograph; proof of identity; proof of residence; verification and signing of annexure 1. The form can be digitally signed by a CA or a CS or a CWA holding a COP. The form can also be digitally signed by a CS in full time employment of the company or MD or Director of the company. The DIN form can also be digitally signed by the applicant by using his or her own DSC.

- As per the amendment to sub-rule (4) the applicant shall submit the Form No. DIN-1 and pay the requisite amount of fees through online mode and the system after processing shall automatically generate the approved DIN.

- As per the amendment to sub-rule (7) the Central Govt may give direction for rectification of defect or incompleteness of application within 15 days. In the event, such defect or incompleteness has not been rectified by the applicant, the Central Govt either reject or treat such application as invalid.

Rule 7. Duty of Director to intimate changes of particular

- As per the amendment to sub-rule (2) and (3) the applicant shall download Form No. DIN-4 from the MCA portal, fill-in the required particular therein, scan and attached copies of the annexure 2. The form needs to be digitally signed by a CA or a CS or a CWA holding a COP. There shall be no fee for intimating the changes in particulars in DIN-4.

Rule 8. Penal action against the applicant in case of false information-

- As per the amendment a new Rule 8 has been inserted and provides that Section 628 of the Companies Act, 1956 shall applicable in respect of any false information furnished by any person in the DIN application or changes thereof.

Click here to view: 26/03/2011 [G.S.R. - dated 26.03.2011 - Rules to amend the Companies \(Director Identification Number\) Rules, 2006](#)



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THE COMPANIES (CENTRAL GOVERNMENT'S) GENERAL RULES AND FORMS, (AMENDMENT), RULES 2011

Central Government notified amendment to Companies (Central Government's) General Rules and Forms 1956, in respect of Annexure 'A", Form 61 pertaining to filling of application with Registrar of Companies pursuant to Section 166, 210, 394, 560, 621A of the Companies Act, 1956, with effect from 26th March, 2011.

In terms amendment to Form 61 in Annexure 'A", the serial number 6 shall be read as under:

- Compounding of offences
- Extension of period of Annual General Meeting by three months under Section 166(1)
- Extending the period of annual accounts up to eighteen months under Section 210(4)
- Declaring a defunct company under Section 560
- Scheme of arrangement, amalgamation
- Normalizing a dormant company
- Others

Click here to view: [26/03/2011](#) [G.S.R. - dated 26.03.2011 - Rules to amend the Companies \(Central Government's\) General Rules and Forms, 1956](#)



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DELEGATION OF POWERS AND FUNCTIONS TO REGISTRARS OF COMPANIES ON SELECTIVE PROVISIONS

CLICK HERE TO VIEW: 17/03/2011 [G.S.R. - dated 17.03.2011 - Delegation of powers and functions to Registrars of Companies on selective provisions](#)

DELEGATION OF POWERS AND FUNCTIONS TO REGIONAL DIRECTORS ON SELECTIVE PROVISIONS

CLICK HERE TO VIEW : 17/03/2011 [G.S.R. - dated 17.03.2011 - Delegation of powers and functions to Regional Directors on selective provisions](#)

AMENDMENTS IN THE NOTIFICATION NUMBER, SRO DATED 7TH JANUARY, 1957

CLICK HERE TO VIEW : 17/03/2011 [S.O. - dated 17.03.2011 - Amendments in the notification number, SRO dated 7th January, 1957](#)



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COMPANIES (NAME AVAILABILITY) RULES, 2011

In exercise of the power conferred by clause (a) of sub-section (1) of section 642 read with sections 20 and 21 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules:

1(i) These Rules may be called "Companies (Name Availability) Rules, 2011";

(ii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

(i) Name of a company in existence; or

(ii) A registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

3. After notification of these Rules, while applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(iv) The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(v) he has gone through all the prescribed guidelines, given in these Rules, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vi) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

4. Where, the proposed name is containing more than one word, there will be an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Companies (Name Availability) Rules, 2011 and Guidelines made therein.

5(i). Where e-form 1A has been certified by the professional in the manner stated at '4' above, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.



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April 01, 2011



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(ii) Where a name has been made available online on the basis of certification of practicing professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with these Rules, the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes.

(iii) Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

6. The name if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass an specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

7. The name if made available to the applicant, shall be reserved for sixty days from the date of approval and further extension of thirty days with revalidation application and fees. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

8. Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

9. In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(iii) The plural version of any of the words appearing in the name;

(iv) The type and case of letters, spacing between letters and punctuation marks;

(v) Joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;

(vi) The use of a different tense or number of the same word does not distinguish one name from another;

(vii) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(viii) Misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(ix) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN does not make a name distinguishable from another, even where (.) is written as 'dot';

(x) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of



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the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' can not be allowed if 'Unique Marbles Limited' is already existing;

Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;

(xi) Different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;

(xii) If the proposed name is an exact Hindi translation of the name of an existing company in English especially an existing company with a reputation, e.g., Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan Ispat Udyog Limited';

10. Guidelines for availability of name

In supersession of all the previous circulars and instructions regarding name availability, the applicants and Registrar of Companies are also advised to adhere following guidelines while applying or approving the proposed name:

(i) It is not necessary that the proposed name should be indicative of the main object. However, in case the proposed name is indicative of any activity, the same will be appropriately reflected in the main object clause of the Memorandum of Association;

(ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as 'ABC limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(vii) If the proposed name includes the word "State", the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia



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limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(viii) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(ix) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

(x) With a view to maintain uniformity, the following guidelines may be followed in the use of keywords, as part of name, while making available the proposed names under section 20 and 21 of the Companies Act, 1956:

S.No	Key Words	Required authorized capital (in Rs.)
1	Corporation, corp, corpn, corp.	25 crore
2	international, Globe, Global, World, Overseas, Universe, Universal, Continent, Continental, InterContinental, Asiatic, Asia, Asian being the first word of the name	5 crore
3	If any of the words at (2) above is used within the name (with or without brackets)	2 crore
4	Hindustan, India, Indo, Indian, Bharat, Bharatvarsh, Bhartiya or any other country's name being first word of the name	2 crore
5	If any of the words at (4) above is used within the name (with or without brackets)	25 lakh
6	Industries/ Udyog	5 crore
7	Enterprises, Products, Business, Manufacturing, Venture.	50 lakh

* * * * *



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PROCESS OF INCORPORATION OF COMPANIES (FORM-1) AND ESTABLISHMENT OF PRINCIPAL PLACE OF BUSINESS IN INDIA BY FOREIGN COMPANIES (FORM-44) – PROCEDURE SIMPLIFIED [MCA/08.03.2011]

General Circular No. 6/2011

F.No. 17/56/2011-CL-V
Government of India
Ministry of Corporate Affairs

th
5 Floor, A Wing, Shastri Bhavan
Dr. R.P. Road, New Delhi-110001

th
Dated 8 March, 2011

To
All Regional Directors
All Registrar of Companies
All Official Liquidators

Sub: Process of incorporation of Companies (Form-1) and establishment of principal place of business in India by Foreign Companies (Form-44) – Procedure simplified.

Sir,

I am directed to inform that Ministry has received various representations regarding time taken by the Registrar of Companies for registration of Form-1 and Form-44.

The Ministry has got the issue examined by Business Process Re-engineering Group under MCA-21 and in order to speed up and simplify the process of incorporation of Companies and establishment of principal place of business in India by Foreign Companies for reduction in time taken by Registrar of Companies, the below mentioned procedure have been recommended :

1. Only Form-1 shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online.
2. There shall be one more category, i.e., Incorporation Forms (Form 1A, Form 37, 39, 44 and 68) which will have the highest priority for approval.
3. Average time taken for incorporation of company should be reduced to one (1) day only.
4. A Notification to notify minor changes in e-forms 18 and 32 to enable them to be taken on record through STP mode for aforesaid procedure is being issued separately.

Yours faithfully,
(Seema Rath)
Assistant Director (Inspection)
Tele : 011-23387263



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PAYMENT OF MCA FEES THROUGH ELECTRONIC MODE

No. HQ/9/2002-Computerization
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan
Dr. R.P. Road, New Delhi-110001th

Dated 9 March, 2011

CIRCULAR

Sub: Payment of MCA fees –electronic mode-regarding

Ministry has reviewed the processes involved in delivery of important services to stakeholders, with a view to identify and improve the components causing delay in disposal of applications. Payment confirmation is found to be a major bottleneck in delivery of services in respect of offline payment made by physical challans .It was found that often there was a delay in confirmation of payments by physical challans, as banks have been given a reporting time of 'T'+3 days, as per payment procedure approved by C&AG,'T' being the transaction date. This leads to delay in creation of work item for disposal of an application/e-form, leading to inconvenience of stakeholders. On the other hand, it was found that wherever fees were paid online in the system, the work item was created faster and the approvals were speedier as banks are following ' T'+1 for reporting online payments.

2. In the interest of stakeholders, with a view to improving service delivery time, Ministry has decided to accept payments of value upto Rs.50,000, for MCA 21 services ,only in electronic mode w.e.f 27th March, 2011.

3. For the payments of value above Rs. 50,000, stakeholders would have the option to either make the payment in electronic mode, or paper challan. However such payments would also be made in electronic mode w.e.f .1st October'2011.

Yours faithfully,

(Nirupama Kotru)





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April 01, 2011



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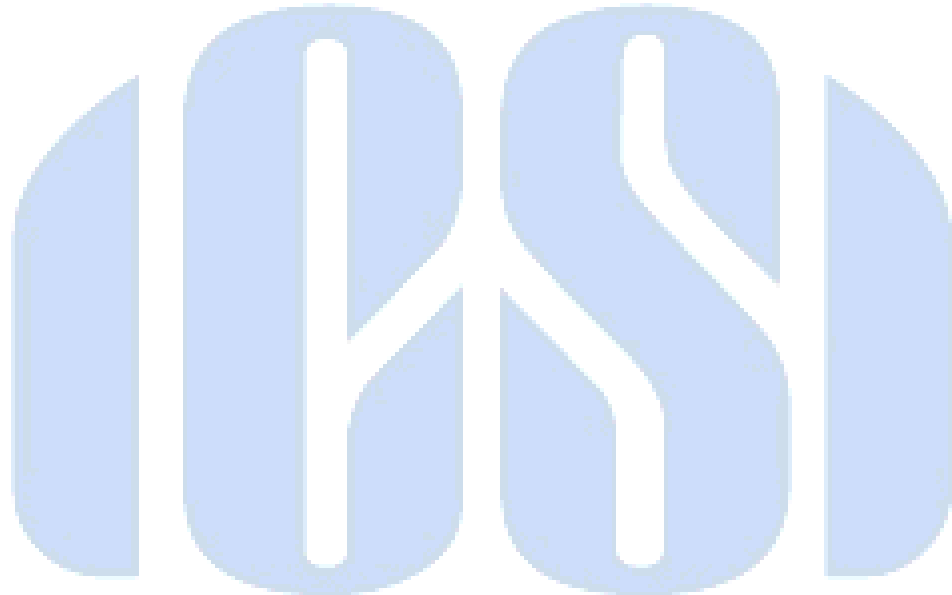
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PAYMENT OF COMMISSION TO NON-WHOLE TIME DIRECTORS OF THE COMPANY UNDER SECTION 309(4)(b) OF THE COMPANIES ACT, 1956

MCA, vide General Circular No. 4/2011 dated 4th March, 2011, has decided that a Company shall not require approval of the central government for making payment of remuneration by way of commission to its non-whole time directors in addition to the sitting fee if the total commission to be paid to all these non-whole time directors does not exceed 1% of the net profit of the company if it has whole time director(s) or 3% of the net profit of the company if it does not have a managing director or whole time director(s).

A copy of the General Circular No. 4/2011 dated 4th March, 2011 is attached herewith or you may visit the following link to get the Circular:-
http://www.mca.gov.in/Ministry/pdf/Circular_4-2011_4mar2011.pdf





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April 01, 2011



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MINISTRY OF CORPORATE AFFAIRS NOTIFIES SECTION 5,6,20,29, 30 & 31 OF COMPETITION ACT, 2002 WITH EFFECT FROM JUNE 01, 2011

March 08, 2011

Dear Professional Colleagues,

The Ministry of Corporate Affairs has notified long awaited Sections 5, 6, 20, 29, 30 & 31 of the Competition Act 2002 **with effect from June 01, 2011**

Section 5 deals with Combination (threshold limits).

Section 6 deals with Regulation of Combinations

Section 20 deals with Inquiry into Combination by Commission

Section 29 deals with procedure for investigation of combination

Section 30 deals with procedure in case of notice under Section 6(2)

Section 31 deals with orders of the commission on certain combinations

Highlights of the notifications

- The notification exempts an enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than Rs. 250 crores or turnover of not more than Rs. 750 crores, from the provisions of section 5 of the Competition Act 2002 for a period of five years.
- The notification exempts the 'Group' exercising less than fifty per cent of voting rights in other enterprise, from the provisions of section 5 of the Competition Act 2002 for a period of five years.
- The notification enhances the value of assets and the value of turnover, by fifty per cent for the purposes of section 5 of the Competition Act 2002 on the basis of the wholesale price index.

The notifications are available at the link

http://www.mca.gov.in/Ministry/notification/pdf/Notification_4mar2011.pdf

The draft Regulations are available at the link

<http://www.cci.gov.in/images/media/Regulations/DraftCombinationRegulation.pdf>

The notification of these provisions will open opportunities for Company Secretaries in Practice. The Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal. Besides, there are a number of concepts, terms such as value of assets, turnover, determination of market, relevant market, geographic market which will require active professional involvement and advice.

Regards,

CS N K Jain
Secretary & CEO



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DIN PROCESS – SIMPLIFIED – REG.

General Circular No.5/2011
F.No.2/1/2011 CL.V
Government of India
Ministry of Corporate Affairs,

Shastri Bhawan,
5th Floor, 'A' Wing,
Dr.Rajendra Prasad Road
New Delhi.
Dated : 04.03.2011

To
All Regional Directors,
All Registrars of Companies,
All Official Liquidators.

SUBJECT; DIN PROCESS – SIMPLIFIED – REG.

Sir,

I am directed to inform that the Ministry's has re-examined the process of allotment of Directors Identification Number (DIN) to be obtained u/s 266B of the Companies Act, 1956. The present process is cumbersome and time consuming. Representations have been received in the Ministry that the documents required to be submitted should be simple to prove the existence/residence of a person, who intend to become a director of a company.

The Ministry has constituted a Group to examine the business process re-engineering under MCA-21. In order to speed up and simplify the process to obtain a DIN, the below mentioned procedure have been recommended.

1. Application for DIN will be made on **eForm** ; **No physical submission of documents shall be accepted** and for this purpose Scanned documents along with verification by the applicant will be attached with the eForm. **Only online fee payment** will be allowed i.e. No challan payment
2. **The application can also be submitted online by the applicant himself using his DSC.**
3. DIN 1 eForm can be **digitally signed by the professional who shall also confirm that he has verified the particulars of the Applicant given in the application.**



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April 01, 2011



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4. Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.

5. In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.

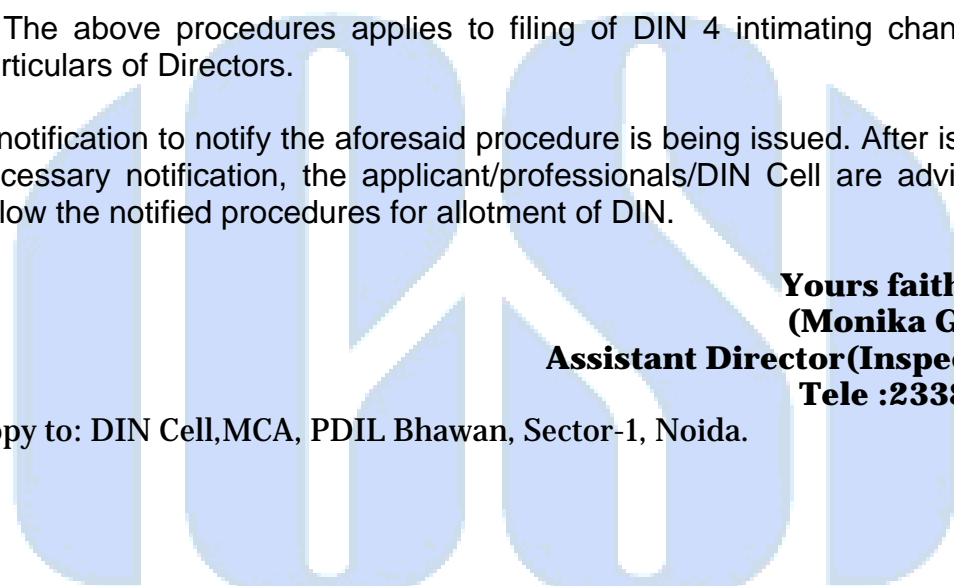
6. Companies (Directors Identification Number) Rules, 2006 are being amended on the above lines.

7. Penal action against the applicant and professional certifying the DIN application in case of false information / certification as per provisions of section 628 of the Act will be taken in addition to action for professional misconduct and revocation of DIN, allotted on false information

8. The above procedures is expected to enable allotment of DIN on the **same day**.

9. The above procedures applies to filing of DIN 4 intimating changes in particulars of Directors.

A notification to notify the aforesaid procedure is being issued. After issue of necessary notification, the applicant/professionals/DIN Cell are advised to follow the notified procedures for allotment of DIN.



**Yours faithfully,
(Monika Gupta)
Assistant Director (Inspection)
Tele :23387263**

Copy to: DIN Cell, MCA, PDIL Bhawan, Sector-1, Noida.





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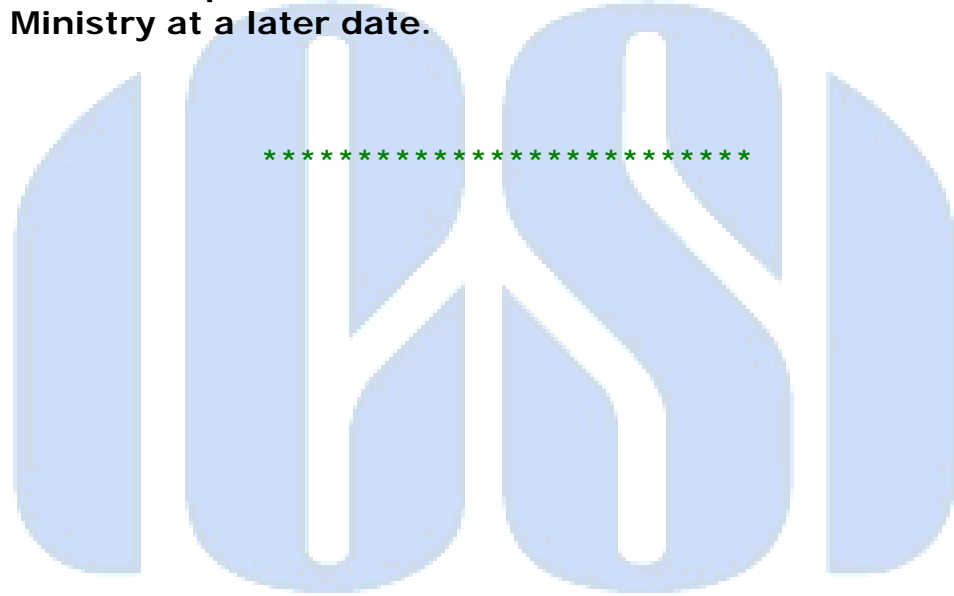


INDIAN ACCOUNTING STANDARDS CONVERGED WITH IFRS

The Ministry of Corporate Affairs has notified convergence of 35 Indian Accounting Standards with International Financial Reporting Standards (henceforth called IND AS) on February 25, 2011.

These are: IND ASs 1, 2, 7, 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 23, 24, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 101, 102, 103, 104, 105, 106, 107 and 108. (available on the MCA website at the link http://www.mca.gov.in/Ministry/accounting_standards.htm)

The date of implementation of the IND AS will be notified by the Ministry at a later date.





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April 01, 2011



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MCA GENERAL CIRCULAR No: 3/2011 DATED: 21ST FEBRUARY ON CLARIFICATION IN RESPECT OF CIRCULAR NO. 2/2011 DATED 8TH FEBRUARY, 2011 REGARDING DIRECTION UNDER SECTION 212(8) OF THE COMPANIES ACT, 1956

General Circular No: 3/2011

No: 5/12/2007-CL-III
Government of India
Ministry of Corporate Affairs

th
5 floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi - 110001

st
Dated: 21 February, 2011

To
All Regional Directors
All Registrar of Companies

Subject: Clarification in respect of Circular No. 2/2011 dated 8th February, 2011 regarding direction under Section 212(8) of the Companies Act, 1956.

Sir,

It is clarified that this Ministry Circular No. 2/2011 dated 8th February, 2011 shall be effective in respect of balance sheet and profit and loss accounts prepared regarding the financial year ending on or after the 31st March, 2011.

Yours faithfully

(Jaikant Singh)
Director



CS Update

April 01, 2011



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General Circular No: 2 /2011

No: 51/12/2007-CL-III
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110 001.
Dated: 8th February, 2011

To

All Regional Directors
All Registrar of Companies

Subject: Direction under Section 212(8) of the Companies Act, 1956.

Sir,

It has been noticed that a large number of companies are approaching the Ministry for exemption under Section 212(8) of the Companies Act, 1956. The matter was examined in the context of the globalizing Indian economy, the increased number of subsidiaries, and the introduction of accounting standards on consolidated financial statements. It has been decided to grant a general exemption provided certain conditions are fulfilled.

The Central Government hereby directs that provisions of Section 212 shall not apply in relation to subsidiaries of those companies which fulfil the following conditions:-

(i) The Board of Directors of the Company has by resolution given consent for not attaching the balance sheet of the subsidiary concerned;

(ii) The company shall present in the annual report, the consolidated financial statements of holding company and all subsidiaries duly audited by its statutory auditors;

(iii) The consolidated financial statement shall be prepared in strict compliance with applicable Accounting Standards and, where applicable, Listing Agreement as prescribed by the Security and Exchange Board of India;

(iv) The company shall disclose in the consolidated balance sheet the following information in aggregate for each subsidiary including subsidiaries of subsidiaries:-
(a) capital (b) reserves (c) total assets (d) total liabilities (e) details of investment (except in case of investment in the subsidiaries) (f) turnover (g) profit before taxation (h) provision for taxation (i) profit after taxation (j) proposed dividend;

(v) The holding company shall undertake in its annual report that annual accounts of the subsidiary companies and the related detailed information shall be made available to shareholders of the holding and subsidiary companies seeking such information at



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any point of time. The annual accounts of the subsidiary companies shall also be kept for inspection by any shareholders in the head office of the holding company and of the subsidiary companies concerned and a note to the above effect will be included in the annual report of the holding company. The holding company shall furnish a hard copy of details of accounts of subsidiaries to any shareholder on demand;

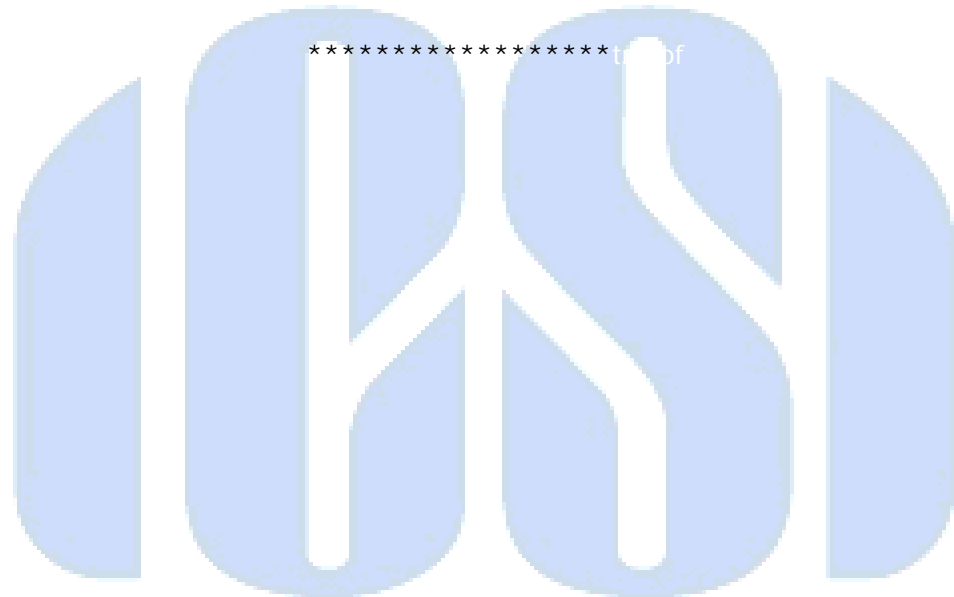
(vi) The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them;

(vii) The company shall give Indian rupee equivalent of the figures given in foreign currency appearing in the accounts of the subsidiary companies along with exchange rate as on closing day of the financial year;

Yours faithfully

(Jaikant Singh)

Director





CS Update

April 01, 2011



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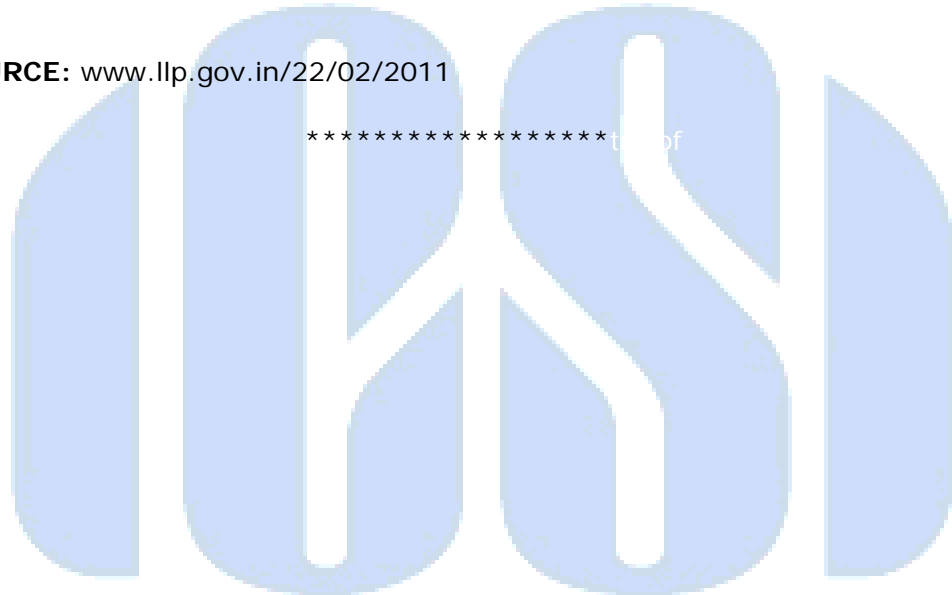


NEW FEATURE INCLUDED IN E-FORMS ON THE LLP PORTAL.

The new feature of downloadable e-forms has been made available on the LLP Portal. Users may now download the e-forms required to be filed and upload the same once filled at their end.

Users are requested to download [Acrobat PDF reader ver. 9.0](#) and above, so as to continue filing forms in the LLP System. Users are also advised to go through the instructions kit for each form before filing any e-form. Any user, who wishes to do any modifications in the e-form once signed before uploading the same in the LLP Portal, is requested to clear the signatures and then make the required modifications and later re-sign the e-form before upload. Users may save the uploaded e-form at their end for future needs like resubmission etc. The same e-form needs to be modified in case of resubmission requested by the LLP Office, for any missing information or change in any information in the uploaded e-form. For more information please contact LLP Helpdesk on 66336666 or mail us at llpsupport-mca@nic.in

SOURCE: www.llp.gov.in/22/02/2011





CS Update

April 01, 2011



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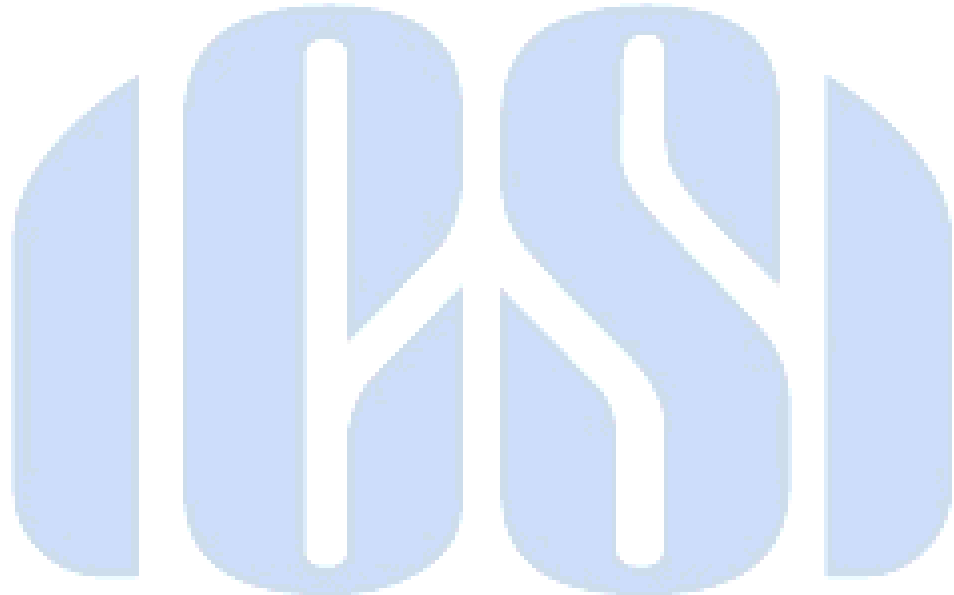


LLP SHALL MANDATORILY FILE FORM 3 AND FORM 4 WITHIN 30 DAYS OF INCORPORATION & FORM 7 SHALL BE DIGITALLY SIGNED BY APPLICANT'S OWN DSC.

1) Every LLP shall mandatorily file Form 3 and Form 4 within 30 days of incorporation failing which Rs.100/- per day will be charged as additional fees on each Form.

2) Form 7 shall be digitally signed by applicant's own DSC. The DSC of other partners and professionals should not be used while applying Form 7.

SOURCE: www.llp.gov.in /22/02/2011





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MCA NOTIFICATIONS ON GENERAL EXEMPTIONS U/S 211 AND APPLICABILITY OF SCH. XIII IN CASE OF UNLISTED COMPANIES

The Ministry of Corporate Affairs has issued notifications on. "General Exemptions under Section 211" and "Applicability of Schedule XIII in regard to Managerial Remuneration in case of unlisted companies". The Ministry has also given directions under Section 212 of the Companies Act, 1956 vide its general circular no. 1/2011. The gist of the same is produced below for your information and reference:

(i) General Exemption under Section 211 of the Companies Act, 1956

Section 211 of the Companies Act, 1956 requires that the balance sheet and profit and loss account of a company shall be in the form set out in Part I of Schedule VI or in such other form as may be approved by the Central Government either generally or in any particular case. So far, these exemptions were being given on a case-by-case basis with certain conditions. The MCA has decided to give general exemption specifying the categories of companies that will be exempted from certain disclosures. Details under PIB Report dated 8th February, 2011 available at the link <http://pib.nic.in/newsite/erelease.aspx?relid=69672>

(ii) Directions under Section 212 of the Companies Act, 1956

Section 212 of the Companies Act, 1956 requires holding companies to attach with their balance sheet a copy of the balance sheet, profit and loss account etc. of each of its subsidiaries. The Ministry has been granting permission not to attach the account of subsidiaries on case-by-case basis on the basis of certain conditions which are intended to protect the interests of investors. The Ministry has vide its general circular no. 1/2011 decided that the permission may be granted on a general basis wherever the Board of Directors of the holding company gives its consent and the conditions prescribed by the Ministry are complied with.. Details are available at the link http://mca.gov.in/Ministry/pdf/Circular_08feb2011.pdf

(iii) Schedule XIII of the Companies Act, 1956 being amended – Unlisted companies shall not require Government approval for managerial remuneration where they have no profits

Schedule XIII of the Companies Act is being amended to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/inadequate



CS Update

April 01, 2011

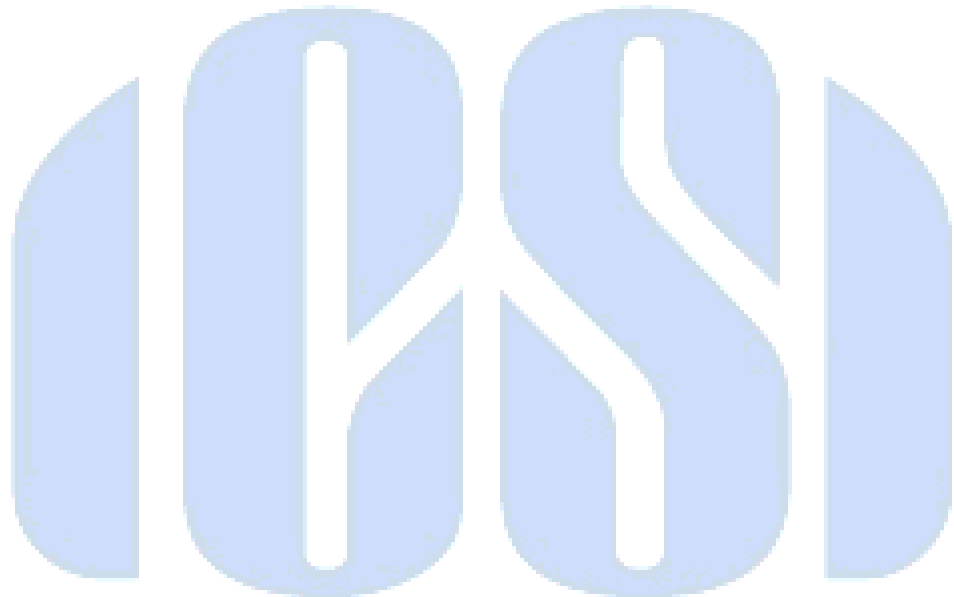
profits, provided they meet the other conditions stipulated in the Schedule. Details available at the link <http://pib.nic.in/newsite/erelease.aspx?relid=69674>



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EXEMPTION UNDER SECTION 211 OF COMPANIES ACT 1956 [MCA NOTIFICATION/DATE: 08/02, 2011]

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB SECTION (ii) of dated the 8th February, 2011]

**Government of India
Ministry of Corporate Affairs
NOTIFICATION**

New Delhi; the 8th February, 2011

S.O. 300 (E). – In exercise of the powers conferred by sub-section (3) of section 211 of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that it is necessary to grant exemption in the public interest, hereby exempts Public Financial Institutions as specified under section 4A of the Companies Act, 1956 from disclosing Investments as required under paragraph (1) of Note (1) of Part-I of Schedule VI in their balance sheet subject to fulfillment of the following conditions, namely:-

- (i) the Public Financial Institutions shall make the complete disclosures about investments in the balance sheet in respect of the following, namely: -
- (a)immovable property;
 - (b)capital of Partnership firms;
 - (c)all unquoted investments and;
 - (d)investments in subsidiary companies.
- (ii) the Public Financial Institutions shall disclose the total value of quoted investments in each of the following respective categories, namely:-
- (a)Government and trusts securities;
 - (b)shares;
 - (c)debentures;
 - (d)bonds; and
 - (e)other securities.



CS Update

April 01, 2011



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(iii) in each of the above categories referred to in sub-paragraphs (i) and (ii), investments where value exceeds two percent of total value in each category or one crore rupees, whichever is lower, shall be disclosed fully provided that where disclosures do not result in disclosure of at least fifty percent of total value of investment in a particular category, additional disclosure of investments in descending order of value shall be made so that specific disclosures account for at least fifty percent of the total value of investments in that category;

(iv) the Public Financial Institutions shall also give an undertaking to the effect that as and when any of the shareholders ask for specific particulars the same shall be provided;

(v) all unquoted investments shall be separately shown;

(vi) the company shall undertake to file with any other authorities, whenever necessary, all the relevant particulars as may be required by the Government or other regulatory bodies;

(vii) the Investments in subsidiary companies or in any company such that it becomes a subsidiary, shall be fully disclosed.

2. This notification shall be applicable in respect of balance sheet and profit and loss accounts prepared in respect of the financial year ending on or after the 31st March, 2011.

[F. No. 51/12/2007-CL.III]
(Dr. T.V. Somanathan)
Joint Secretary





CS Update

April 01, 2011



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EASY EXIT SCHEME, 2011

February 7, 2011

Dear Professional Colleagues,

The Ministry of Corporate Affairs had introduced the Easy Exit Scheme, 2011 under Section 560 of the Companies Act, 1956 to give an opportunity to defunct companies, for getting their names struck off the Register of Companies. The scheme was originally in operation from 1st January, 2011 to 31st January, 2011

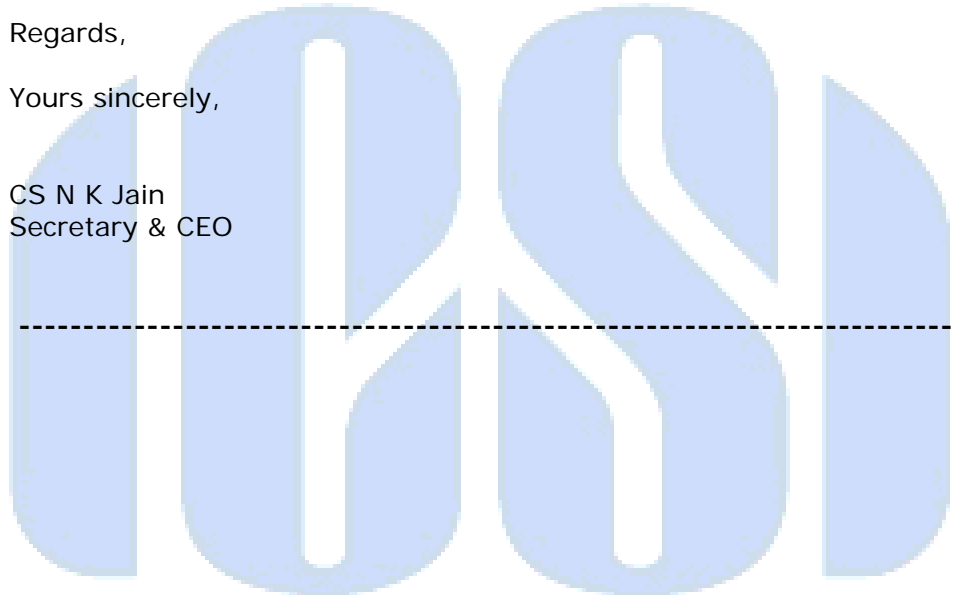
The MCA has vide its General Circular No. 1/2011 dated 3rd Feb, 2011 extended the Scheme for a further period of three months i.e. upto 30th April, 2011.

Copy of the General Circular No. 1/2011 dated 03.02.2011 is appended below for your ready reference. The same may be downloaded from the MCA website at the link http://www.mca.gov.in/Ministry/pdf/Circular_EES2011_03feb2011.pdf

Regards,

Yours sincerely,

CS N K Jain
Secretary & CEO





CS Update

April 01, 2011



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General Circular No. 1/2011

F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs

th
5 Floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road , New Delhi
_{rd}

Dated the 3 Feb, 2011

To
All Regional Director,
All Registrar of Companies.

Subject: Easy Exit Scheme , 2011

Sir,

In continuation to this Ministry's earlier circular no. 6/2010 dated 03.12.2010 on the subject cited above, it has been decided to extend th the Scheme for another three months i.e. upto 30 April, 2011.

2. All the terms of circular no. 6/2010 dated 03.12.2010 will remain the same.

Yours faithfully,

(Monika Gupta)
Assistant Director





CS Update

April 01, 2011



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SEBI UPDATE





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FII INVESTMENT IN CORPORATE BONDS INFRA LONG TERM CATEGORY

CIRCULAR

CIR/IMD/FIIC/5/2011

March 31, 2011

To

All Foreign Institutional Investors through their designated Custodians of Securities

Sub: FII Investment in corporate bonds infra long term category

Please refer to the SEBI circular CIR/IMD/FIIC/18/2010 dated November 26, 2010 wherein the mechanism of allocation of newly announced limit of long-term corporate debt (infrastructure) was announced

Increase in overall limits

1. The existing limit of USD 5 billion for investment by foreign Institutional investors (FIIs) in corporate bonds issued by companies in the infrastructure sector with a residual maturity of over five years has been increased by an additional limit of USD 20 billion taking the total limit to USD 25 billion. These investments are now permissible in unlisted instruments.

Investments in unlisted bonds

2. FIIs shall now be eligible to invest in unlisted bonds issued by companies in the infrastructure sector that are generally organised in the form of special purpose vehicles.

Lock-in period for investments subject to inter FII trading

3. Investments in such bonds shall have a minimum lock-in period of three years. However, during the lock-in period, FIIs will be allowed to trade amongst themselves. During the lock-in period, the investments cannot however, be sold to domestic investors.

No change in identification of companies eligible as "Infrastructure"

4. Identification of corporate bonds issued by companies in the infrastructure sector shall be in terms of SEBI circular IMD/FII&C/18/2010 dated November 26, 2010.

Manner of allocation

5. In partial amendment to the aforesaid circular IMD/FII&C/18/2010, it is decided to do away with the allocation methodology for investment in Corporate Debt –Long term Infra category.



CS Update

April 01, 2011



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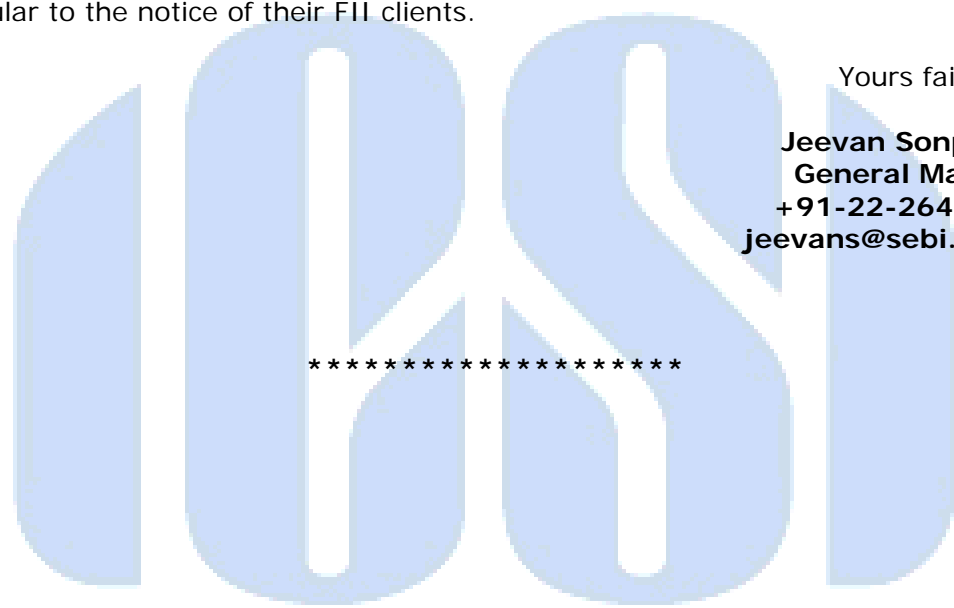
6. FII/sub-accounts can now avail of these limits without obtaining SEBI approval till the overall FII investments reaches 90% (ninety percent) i.e. USD 22.5 billion. After which the process mentioned in circular dated November 26, 2010 shall be initiated for allocation of remaining limits.

Special window at exchanges

7. To facilitate to the FIIs during the lock-in period as mentioned at para 3 above, a special trading window for FIIs shall be provided by Exchanges on the same lines as is available for equities in companies where the overall FII investment has touched the maximum limit.

This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

A copy of this circular is available at the web page "F.I.I." on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.



Yours faithfully,

Jeevan Sonparote
General Manager
+91-22-26449110
jeevans@sebi.gov.in





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DISSEMINATION OF FURTHER INFORMATION ABOUT FII ACTIVITY – DISCONTINUANCE OF REPORTING

CIRCULAR

CIR/IMD/FIIC/4/2011 March 29, 2011

To

All Foreign Institutional Investors through their designated Custodians of Securities

Sub:- Dissemination of further information about FII activity – Discontinuance of Reporting

1. Please refer to Circular No. IMD/FII&C/32/2008 dated October 16, 2008 read with Circular No. IMD/FII&C/34/2008 dated October 20, 2008 and Circular No. IMD/FII&C/4/2010 dated June 29, 2010 related to reporting of information pertaining to securities lent by the FIIs to entities abroad.
2. Based on these circulars, FIIs have been submitting weekly reports based on which disclosures have been made available for public dissemination at <http://203.199.12.51/SecuritiesLentMain.html> every Tuesday.
3. The reports filed by the FIIs have been reviewed and it is noted that as on March 04, 2011 there are no outstanding short positions reported by the FIIs.
4. While the prohibition on the activity of synthetic short continues, the FIIs are no longer required to file these reports, with effect from the date of this circular, as there are no outstanding short positions.
5. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
6. A copy of this circular is available at the web page "F.I.I." on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

Yours faithfully,

Jeevan Sonparote
General Manager
+91-22-26449110
jeevans@sebi.gov.in



CS Update

April 01, 2011



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RBI UPDATE





EXPORT OF GOODS AND SOFTWARE – REALISATION AND REPATRIATION OF EXPORT PROCEEDS – LIBERALISATION

RBI/2010-11/457

A.P. (DIR Series) Circular No. 47

March 31, 2011

To

All Category - I Authorised Dealer Banks

Madam / Sir,

Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to [A.P. \(DIR Series\) Circular No. 57 dated June 29, 2010](#) enhancing the period of realization and repatriation to India of the amount representing the full export value of goods or software exported, from **six months to twelve months** from the date of export. This relaxation was up to March 31, 2011.

2. The issue has since been reviewed and it has been decided, in consultation with the Government of India, to extend the above relaxation up to September 30, 2011, subject to review.
3. The provisions in regard to period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remains unchanged.
4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
5. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Dr. Sujatha Elizabeth Prasad)
Chief General Manager

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THE BANKING COMPANIES (NOMINATION) RULES, 1985 - CLARIFICATIONS

RBI/2010-11/454
DBOD.No. Leg. BC. 83/09.07.005/2010-11

March 30, 2011

All Scheduled Commercial Banks(Excluding RRBs)

Dear Sir,

The Banking Companies (Nomination) Rules, 1985- Clarifications

1. Witness in nomination forms

As you are aware, the Banking Companies (Nomination) Rules, 1985 have been framed in exercise of powers conferred by Section 52 read with Sections 45ZA, 45ZC and 45ZE of the Banking Regulation Act, 1949. The nomination forms (DA1, DA2 and DA3) have also been prescribed in the Nomination Rules. These forms, inter alia, prescribe that the thumb impression of the accountholder is required to be attested by two witnesses. It has come to our notice that some banks also insist on attestation of signature by witnesses.

We have examined the issue in consultation with Indian Banks' Association and clarify that signatures of the accountholders in forms DA1, DA2 and DA3 need not be attested by witnesses.

2. Nomination in case of joint Deposit Accounts

It is understood that sometimes the customers opening joint accounts with or without "Either or Survivor " mandate, are dissuaded from exercising the nomination facility.

It is clarified that nomination facility is available for joint deposit accounts also. Banks are, therefore, advised to ensure that their branches offer nomination facility to all deposit accounts including joint accounts opened by the customers.

Banks are advised to ensure strict compliance of the instructions as per the clarification given above.

Yours faithfully

(P R Ravi Mohan)

Chief General Manager



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NBFCs NOT TO BE PARTNERS IN PARTNERSHIP FIRMS

RBI/2010-11/453
DNBS.PD/ CC.NO. 214/03.02.002/2010-11

March 30, 2011

All NBFCs

Dear Sir,

NBFCs not to be Partners in Partnership firms

It has come to the notice of the Reserve Bank of India that some NBFCs have large investments in / have contributed capital to partnership firms.

2. In view of the risks involved in NBFCs associating themselves with partnership firms, it has been decided to prohibit NBFCs from contributing capital to any partnership firm or to be partners in partnership firms. In cases of existing partnerships, NBFCs may seek early retirement from the partnership firms.

3. Copies of Amending [Notifications No. DNBS.227/CGM \(US\)-2011](#) and [No. DNBS.228/CGM \(US\)-2011](#) dated March 30, 2011 are enclosed for meticulous compliance.

Yours sincerely,

(Uma Subramaniam)
Chief General Manager-in-Charge

Encl: as above

RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
CENTRE I, WORLD TRADE CENTRE,
CUFFE PARADE, COLABA,
MUMBAI 400 005.

Notification no. DNBS.227 / CGM(US)-2011 dated March 30, 2011

The Reserve Bank of India, having considered it necessary in public interest and being satisfied that, for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 (hereinafter referred to as the said Directions) contained in Notification No. DNBS. 192/DG(VL)-2007 dated February 22, 2007, in exercise of the powers conferred by section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said Directions shall be amended with immediate effect as follows-



CS Update

April 01, 2011



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Insertion of new paragraph 19 A-

After paragraph 19 of the said Directions, the following paragraph 19A shall be inserted.

"NBFCs not to be partners in partnership firms"

19A. (1) No non-banking financial company, which is accepting public deposit shall contribute to the capital of a partnership firm or become a partner of such firm.

(2) A non-banking financial company, which is accepting public deposit and which had already contributed to the capital of a partnership firm or was a partner of a partnership shall seek early retirement from the partnership firm.

(Uma Subramaniam)
Chief General Manager

RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
CENTRAL OFFICE
CENTRE I, WORLD TRADE CENTRE,
CUFFE PARADE, COLABA,
MUMBAI 400 005.

Notification no. DNBS. 228 / CGM(US)-2011 dated March 30, 2011

The Reserve Bank of India, having considered it necessary in public interest and being satisfied that, for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to amend the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 (hereinafter referred to as the said Directions) contained in Notification No. DNBS. 193/DG(VL)-2007 dated February 22, 2007, in exercise of the powers conferred by section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, hereby directs that the said Directions shall be amended with immediate effect as follows, namely -

Insertion of new paragraph 20 A-

After paragraph 20 of the said Directions, the following paragraph 20A shall be inserted.

"NBFCs not to be partners in partnership firms"

20A. (1) No non-banking financial company shall contribute to the capital of a partnership firm or become a partner of such firm.

(2) A non-banking financial company, which had already contributed to the capital of a partnership firm or was a partner of a partnership firm shall seek early retirement from the partnership firm.

(Uma Subramaniam)
Chief General Manager



CS Update

April 01, 2011



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DIPP UPDATE





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PRESS RELEASE ON CIRCULAR 1 OF 2011

Circular 1 of 2011, being released today, is the third edition of the Consolidated FDI Policy. One year has passed since the policy on Foreign Direct investment (FDI), was consolidated and released for the first time, effective 1.4.2010. At that time, Government had committed to updating this document every six months. The second edition was released, effective from 1.10.2010.

2. The following major changes have been incorporated in the latest consolidation:

(i) Pricing of Convertible instruments

(paragraph 3.2.1 of Circular 1 of 2011):

Instead of specifying the price of convertible instruments upfront, companies will now have the option of prescribing a conversion formula, subject to the FEMA/ SEBI guidelines on pricing. This would help the recipient companies in obtaining a better valuation based upon their performance.

(ii) Inclusion of fresh items for issue of shares against non-cash considerations

(paragraph 3.4.6 of Circular 1 of 2011):

The existing policy provides for conversion of only ECB/lump-sum fee/Royalty into equity. A discussion paper on the possibility and need for inclusion of additional items into equity had been released by DIPP in September, 2010. After stakeholder consultations, Government has now decided to permit issue of equity, under the Government route, in the following cases, subject to specific conditions:

(a) import of capital goods/ machinery/ equipment (including second-hand machinery)

(b) pre-operative/ pre-incorporation expenses (including payments of rent etc.)

This measure, which liberalises conditions for conversion of non-cash items into equity, is expected to significantly ease the conduct of business.

(iii) Removal of the condition of prior approval in case of existing joint ventures/ technical collaborations in the 'same field'

(paragraph 4.2.2 of Circular 2 of 2010):

A discussion paper had been released by DIPP last year on the need for review of this condition. There is a felt need to attract fresh investment and technology inflows into the country, as also to reduce the levels of State intervention in the commercial sphere. Keeping in view the above, Government has decided to abolish this condition. It is expected that this measure will promote the competitiveness of

(iv) Guidelines relating to down-stream investments



CS Update

April 01, 2011



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(paragraph 4.6 of Circular 1 of 2011):

The guidelines have been comprehensively simplified and rationalised. Companies have now been classified into only two categories – ‘companies owned or controlled by foreign investors’ and ‘companies owned and controlled by Indian residents’. The earlier categorisation of ‘investing companies’, ‘operating companies’ and ‘investing-cum-operating companies’ has been done away with.

(v) Development of Seeds

(paragraph 5.2.1 of Circular 1 of 2011):

In the agriculture sector, FDI will now be permitted in the development and production of seeds and planting material, without the stipulation of having to do so



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CONSOLIDATED FDI POLICY - CIRCULAR 1 OF 2011

Click here to view: [Consolidated FDI Policy - Circular 1 of 2011](#)





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TAX LAW UPDATE





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SERVICE TAX NOTIFICATION

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)
New Delhi, 31st March, 2011

Notification No. 22/2011 – Service Tax

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Export of Services Rules, 2005, namely :-

1. (1) These rules may be called the Export of Services (Second Amendment) Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. In the Export of Services Rules, 2005, in rule 3, in sub-rule (1), in clause (ii), in the second proviso, the brackets and letters "(zzh)" shall be omitted.

[F. No. 334/1/2011-TRU]

(SAMAR NANDA)
Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 9/2005-Service Tax, dated the 3rd March, 2005, published in the Gazette of India, Extraordinary vide number G.S.R. 151(E), dated the 3rd March 2005 and last amended vide notification No.12/2011-Service Tax, dated the 1st March, 2011, vide number G.S.R.169 (E), dated the 1st March, 2011





CS Update

April 01, 2011



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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue
New Delhi, 31st March, 2011

Notification No.23/2011 – Service Tax

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 read with section 66A of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following rules further to amend the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, namely :-

1. (1) These rules may be called the Taxation of Services (Provided from Outside India and Received in India) Amendment Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. In the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, in rule 3, in clause (ii), in the second proviso, the brackets and letters “(zzh)” shall be omitted.

[F. No. 334/3/2011-TRU]
(SAMAR NANDA)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 11/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary vide number G.S.R. 227(E), dated the 19th April, 2006 and last amended vide notification No.13/2011Service Tax, dated the 1st March, 2011, vide number G.S.R.170 (E), dated the 1st March, 2011.



CS Update

April 01, 2011



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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue
New Delhi, 31st March, 2011

Notification No.24/2011 – Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-

1. (1) These rules may be called the Service Tax (Determination of Value) Second Amendment Rules, 2011.
(2) They shall come into force on the 1st day of April, 2011.

2. In the Service Tax (Determination of Value) Rules, 2006, in rule 2B, for the words “reference rate for that currency for that day”, the words “reference rate for that currency at that time” shall be substituted.

[F. No. 334/3/ 2011 – TRU]
(SAMAR NANDA)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 12/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary vide number G.S.R. 228(E), dated the 19th April, 2006 and last amended vide notification No.02/2011-Service Tax, dated the 1st March, 2011, vide number G.S.R. 159(E), dated the 1st March, 2011.



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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

New Delhi, 31st March, 2011

Notification No.25/2011 – Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. In the Point of Taxation Rules, 2011 (hereinafter referred to as the “said rules”), for rule 3, the following rule shall be substituted, namely:-

“3. Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, „point of taxation” shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

3. In rule 4 of the said rules,-



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(i) for the words “change of rate”, wherever they occur, the words “change in effective rate of tax” shall be substituted;

(ii) for the words “change of rate of tax” or “change in tax rate” or “change of tax rate”, respectively at both the places where they occur, the words “change in effective rate of tax” shall be substituted;

(iii) after sub-clause (iii) of clause (b), the following Explanation shall be inserted, namely:-

“Explanation.- For the purposes of this rule, “change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.”

4. For rule 6 of the said rules, the following rule shall be substituted, namely:-

“6. Determination of point of taxation in case of continuous supply of service.- Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the `point of taxation" shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation 1. – For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Explanation 2.- For the purpose of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

5. For rule 7, the following rule shall be substituted, namely:-

“7. Determination of point of taxation in case of specified services or persons.- Notwithstanding anything contained in these rules, the point of taxation in respect of,-

(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be:

Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.



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Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

6. For rule 9, the following rule shall be substituted, namely:-

“9. Transitional Provisions.- Nothing contained in this sub-rule shall be applicable,-

(i) where the provision of service is completed; or

(ii) where invoices are issued

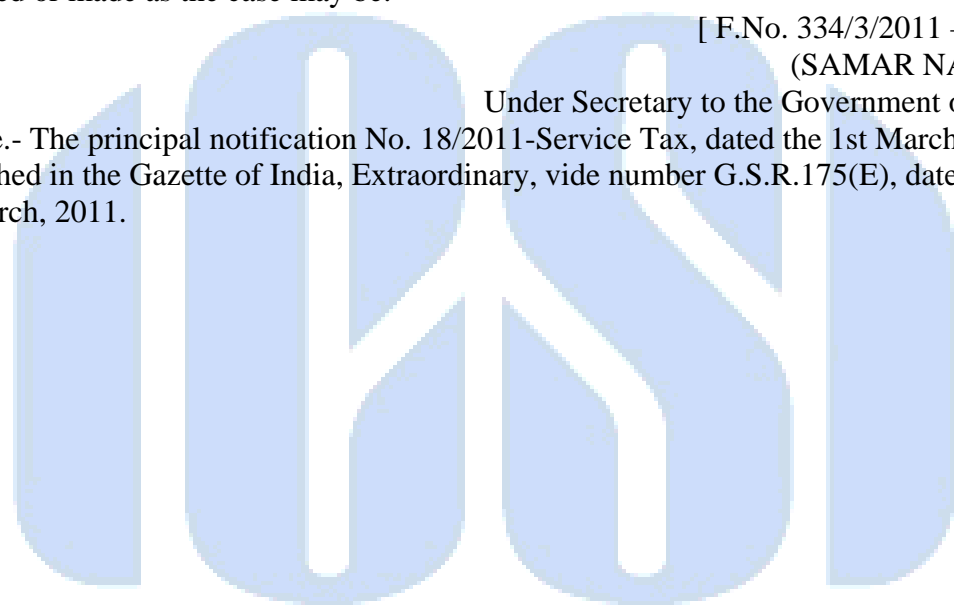
prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.

[F.No. 334/3/2011 – TRU]
(SAMAR NANDA)

Under Secretary to the Government of India

Note.- The principal notification No. 18/2011-Service Tax, dated the 1st March 2011, published in the Gazette of India, Extraordinary, vide number G.S.R.175(E), dated the 1st March, 2011.





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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No.26/2011 – Service Tax
New Delhi, 31st March, 2011

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :-

1. (1) These rules may be called the Service Tax (Second Amendment) Rules, 2011.
- (2) They shall come into force on the 1st day of April, 2011.
2. In the Service Tax Rules, 1994 (hereinafter referred to as the “said rules”), in rule (4A), in sub-rule (1),-
 - (i) for the words “provision of”, the words “completion of” shall be substituted;
 - (ii) after the second proviso, the following proviso shall be inserted, namely:-

“Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within fourteen days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed.”;
3. In rule 6 of the said rules,-
 - (a) in sub-rule (3),-
 - (i) after the words “partially for any reason”, the words “or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract,” shall be inserted;
 - (ii) for clause (a), the following clause shall be substituted, namely:-

“(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or”
 - (b) in sub-rule (7B),-



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(i) for the words and figures “at the rate of 0.1 per cent. of the gross amount of currency exchanged”, the words “at the following rate” shall be substituted;

(ii) for the words “of the Act”, the following shall be substituted, namely:-
“of the Act, namely:

(a) 0.1 per cent. of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 25; and

(b) rupees 100 and 0.05 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and upto rupees 10,00,000; and

(c) rupees 550 and 0.01 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 5000:

Provided that the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.”

[F. No. 334/3/ 2011 – TRU]
(SAMAR NANDA)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 2/1994-Service Tax, dated the 28th June, 1994, published in the Gazette of India, Extraordinary vide number G.S.R. 546(E), dated the 28th June, 1994 and last amended vide notification No.3/2011-Service Tax, dated the 1st March, 2011, vide number G.S.R. 160(E), dated the 1st March, 2011.



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April 01, 2011



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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)
New Delhi, 31st March, 2011

Notification No.27/2011 – Service Tax

G.S.R. (E).- In exercise of the powers conferred by of sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 19/2009-Service Tax, dated the 7th July, 2009, published in the Gazette of India, Extraordinary, vide number G.S.R.491 (E), dated the 7th July, 2009, for the words “a Scheduled bank, by any other Scheduled bank”, the words “any bank, including a bank located outside India, or money changer, by any other bank or money changer” shall be substituted.

2. This notification shall come into force on the 1st day of April, 2011.

[F. No. 334/3/2011-TRU]
(SAMAR NANDA)

Under Secretary to the Government of India

Note.- The principal notification No. 19/2009-Service Tax, dated the 7th July, 2009, published in the Gazette of India, Extraordinary, vide number G.S.R.491 (E), dated the 7th July, 2009.



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NOTIFICATION NO. 13/2011-CENTRAL EXCISE (N.T.)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 31st March, 2011

Notification No. 13/2011-Central Excise (N.T.)

G.S.R. -(E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely :-

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules") in rule 4, for sub-rule 7, the following sub-rule shall be substituted, namely:-

'(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:

Provided that in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be



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entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Explanation I.- The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March".

3. In rule 6 of the said rules, in *Explanation I*, in clause (c) for the words "shall be the difference between the sale price and the purchase price of the goods traded", the words "shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more" shall be substituted.

4. In rule 9 of the said rules, after clause (b), the following clause may be inserted, namely:-

"(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax."



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April 01, 2011



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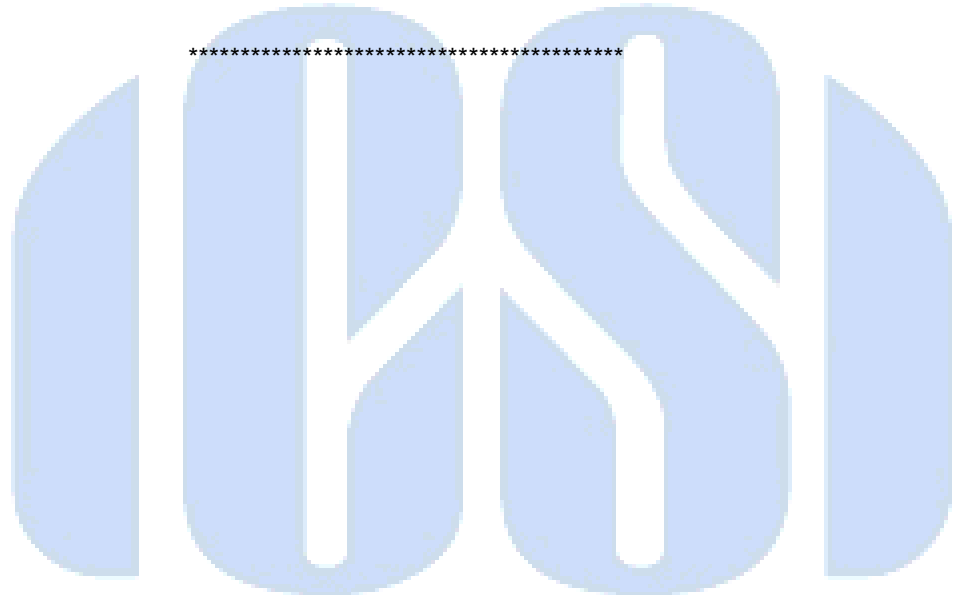
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[F.No. 334/3/2011- TRU]

(SAMAR NANDA)
Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide notification No. 23/2004-Central Excise (N.T.), dated the 10th September 2004, [G.S.R. 600(E), dated the 10th September, 2004] and last amended vide notification No. 9/2011-Central Excise (N.T.), dated 24th March, 2011 [G.S.R. 245(E), dated the 24th March, 2011].





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NOTIFICATION NO. 33/ 2011- CUSTOMS

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 33/ 2011- Customs

New Delhi, the 30th March, 2011

G.S.R. 265(E).- In exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975), read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 33/2006-Customs, dated the 7th April, 2006, published in the Gazette of India, vide number G.S.R. 211(E), dated the 7th April, 2006, except as respects things done or omitted to be done before such rescission.

[F. No. 354/19/2000-
TRU(Pt.I)]

(Vikas)
Under Secretary to the Government of India

**Department of Industrial Policy and
Promotion**

Ministry of Commerce and Industry

Government of India

CONSOLIDATED FDI POLICY

(EFFECTIVE FROM APRIL 1, 2011)

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

CIRCULAR 1 OF 2011

SUBJECT: CONSOLIDATED FDI POLICY.

The “Consolidated FDI Policy” is attached.

2. This circular will take effect from April 1, 2011.

(V.Bhaskar)
Joint Secretary to the Government of India

D/o IPP F. No. 5(1)/2011-FC Dated 31.03.2011

Copy forwarded to:

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

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CHAPTER 1: INTENT AND OBJECTIVE

1.1 INTENT AND OBJECTIVE

1.1.1 It is the intent and objective of the Government to promote foreign direct investment through a policy framework which is transparent, predictable, simple and clear and reduces regulatory burden. The system of periodic consolidation and updation is introduced as an investor friendly measure.

1.1.2 ‘Investment’ is usually understood as financial contribution to the capital of an enterprise or purchase of shares in the enterprise. ‘Foreign investment’ is investment in an enterprise by a Non-Resident irrespective of whether this involves new capital or re-investment of earnings. Foreign investment is of two kinds – (i) Foreign Direct Investment (FDI) and (ii) Foreign Portfolio Investment.

1.1.3 International Monetary Fund (IMF) and Organization for Economic Cooperation and Development(OECD) define FDI similarly as a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a ‘lasting interest’ in an enterprise (the direct investment enterprise) that is resident in an economy other than that of the direct investor. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. Direct investment allows the direct investor to gain access to the direct investment enterprise which it might otherwise be unable to do. The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise. In the Indian context, FDI is defined in Para 2.1.12 of this Circular.

1.1.4 It is the policy of the Government of India to attract and promote productive FDI in activities which significantly contribute to industrialization and socio-economic development. FDI supplements domestic capital and technology.

1.1.5 The Legal basis: Foreign Direct Investment by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' and is regulated under FEMA, 1999 and its regulations. Keeping in view the current requirements, the Government from time to time comes up with new regulations and amendments/changes in the existing ones through order/allied rules, Press Notes, etc. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendment to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. The procedural instructions are issued by the Reserve Bank of India vide A.P.Dir. (series) Circulars. The regulatory framework over a period of time thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.6 The Circular 1 of 2010 and Circular 2 of 2010 issued by this Department on 31st March 2010 and 30th September 2010 respectively, consolidated into one document all the prior policies/regulations on FDI which are contained in FEMA, 1999, RBI Regulations under FEMA, 1999 and Press Notes/Press Releases/Clarifications issued by DIPP and reflected the current policy framework on FDI. The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/ Circulars issued by DIPP, which were in force as on March 31, 2011, and reflects the FDI Policy as on April 1, 2011. This Circular accordingly will take effect from April 1, 2011. Its next revision will be published on 30.09.2011.

1.1.7 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to April 1, 2011, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

1.1.8 While this circular consolidates FDI Policy Framework, the legal edifice is built on notifications issued by RBI under FEMA. Therefore, any changes notified by RBI from time to

time would have to be complied with and where there is a need / scope of interpretation, the relevant FEMA notification will prevail.

1.1.9 Reference to any statute or legislation made in this Circular shall include reference to any modifications, amendments or re-enactments thereof.

CHAPTER 2: DEFINITIONS

2.1 DEFINITIONS: The definitions of terms used in this circular are as follows:-

- 2.1.1 ‘AD Category-I Bank’ means a bank(Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.
- 2.1.2 ‘Authorized Bank’ means a bank including a co-operative bank (other than an authorized dealer) authorized by the Reserve Bank to maintain an account of a person resident outside India
- 2.1.3 ‘Authorized Dealer’ means a person authorized as an authorized dealer under sub-section (1) of section 10 of FEMA.
- 2.1.4 ‘Authorized Person’ means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under Sub-section (a) of Section 10 of FEMA to deal in foreign exchange or foreign securities.
- 2.1.5 ‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.
- Note : Warrants and partly paid shares can be issued to person/ (s) resident outside India only after approval through the Government route¹.
- 2.1.6 ‘Capital account transaction’ means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 of FEMA.
- 2.1.7 A company is considered as “Controlled” by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company .

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

- 2.1.8 An entity is considered as ‘Controlled’ by ‘non resident entities’, if non-residents have the power to appoint a majority of its directors
- 2.1.9 ‘Depository Receipt’ (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs).
- 2.1.10 ‘Erstwhile Overseas Corporate Body’ (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indian and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indian directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.
- 2.1.11 ‘Foreign Currency Convertible Bond’(FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.
- 2.1.12 ‘FDI’ means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM(Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.
- 2.1.13 ‘FEMA’ means the Foreign Exchange Management Act 1999 (42 of 1999).

- 2.1.14 'FIPB' means the Foreign Investment Promotion Board constituted by the Government of India.
- 2.1.15 'Foreign Institutional Investor'(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the SEBI (FII) Regulations 1995.
- 2.1.16 'Foreign Venture Capital Investor' (FVCI) means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 {SEBI(FVCI) Regulations} and proposes to make investment in accordance with these Regulations
- 2.1.17 'Government route' means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval from FIPB, Ministry of Finance or SIA, DIPP as the case may be.
- 2.1.18 'Holding Company' would have the same meaning as defined in Companies Act 1956.
- 2.1.19 'Indian Company' means a company incorporated in India under the Companies Act, 1956.
- 2.1.20 'Indian Venture Capital Undertaking' (IVCU) means an Indian company:—
- (i) whose shares are not listed in a recognised stock exchange in India;
 - (ii) which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.
- 2.1.21 'Investing Company' means an Indian Company holding only investments in other Indian company/ (ies), directly or indirectly, other than for trading of such holdings/securities.
- 2.1.22 'Investment on repatriable basis' means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India and the expression 'investment on non-repatriable basis' shall be construed accordingly.

- 2.1.23 'Joint Venture' (JV) means an Indian entity incorporated in accordance with the laws and regulations in India in whose capital a non-resident entity makes an investment.
- 2.1.24 'Non resident entity' means a 'person resident outside India' as defined under FEMA.
- 2.1.25 'Non Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is a person of Indian origin.
- 2.1.26 A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;
- 2.1.27 An entity is considered as 'Owned' by 'non resident entities', if more than 50% of the capital in it is beneficially owned by non-residents.
- 2.1.28 'PAB' means Project Approval Board in DIPP, Ministry of Commerce & Industry, Government of India.
- 2.1.29 'Person' includes
- (i) an individual
 - (ii) a Hindu undivided family,
 - (iii) a company
 - (iv) a firm
 - (v) an association of persons or a body of individuals whether incorporated or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (vii) any agency, office, or branch owned or controlled by such person.
- 2.1.30 'Person of Indian Origin' (PIO) means a citizen of any country other than Bangladesh or Pakistan, if
- (i) he at any time held Indian Passport
 - (ii) he or either of his parents or any of his grandparents was a citizen of India by

virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);
or

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

2.1.31 'Person resident in India' means -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Act, 1955.

- 2.1.36 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.
- 2.1.37 'SEZ' means a Special Economic Zone as defined in Special Economic Zone Act, 2005.
- 2.1.38 'SIA' means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.
- 2.1.39 'Transferable Development Rights' (TDR) means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.
- 2.1.40 'Venture Capital Fund' (VCF) means a Fund established in the form of a Trust, a company including a body corporate and registered under Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996, which
- (i) has a dedicated pool of capital;
 - (ii) raised in the manner specified under the Regulations; and
 - (iii) invests in accordance with the Regulations.

CHAPTER 3: ORIGIN, TYPE, ELIGIBILITY, CONDITIONS AND ISSUE/TRANSFER OF INVESTMENT

3.1 WHO CAN INVEST IN INDIA?

3.1.1 A non-resident entity (other than a citizen of Pakistan or an entity incorporated in Pakistan) can invest in India, subject to the FDI Policy. A citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI Policy, only under the Government route.

3.1.2 NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

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

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

(ii) The Indian company which has issued shares to FIIs under the FDI Policy for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR (**Annex-1-A**) (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical/monitoring purposes.

(iii) A daily statement in respect of all transactions (except derivative trade) have to be submitted by the custodian bank in floppy / soft copy in the prescribed format directly to RBI to monitor the overall ceiling/sectoral cap/statutory ceiling.

3.1.5 No person other than registered FII/NRI as per Schedules II and III of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations of FEMA 1999, can invest/trade in capital of Indian Companies in the Indian Stock Exchanges directly i.e. through brokers like a Person Resident in India.

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

3.2 **TYPES OF INSTRUMENTS.**

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

3.2.2 Other types of Preference shares/Debentures i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECBs relating to eligible borrowers,

recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of London Interbank Offered Rate (LIBOR) plus the spread as permissible for ECBs of corresponding maturity.

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

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

- (i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR (ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.
- (ii) A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.
- (iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. ADRs / GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilization of the proceeds, the Indian company can invest the funds in:-
 - (a) Deposits, Certificate of Deposits or other instruments offered by banks rated by Standard and Poor, Fitch, IBCA ,Moody's, etc. with rating not below the rating stipulated by Reserve Bank from time to time for the purpose;
 - (b) Deposits with branch/es of Indian Authorized Dealers outside India; and

- (c) Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less.
- (iv) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.
- (v) The ADR / GDR proceeds can be utilized for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.
- (vi) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank from time to time, as applicable to all shareholders exercising voting rights.
- (vii) Erstwhile OCBs who are not eligible to invest in India and entities prohibited from buying, selling or dealing in securities by SEBI will not be eligible to subscribe to ADRs/ GDRs issued by Indian companies.
- (viii) The pricing of ADR / GDR issues should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.
- (ix) The pricing of sponsored ADRs/GDRs would be determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

3.2.5 (i) **Two-way Fungibility Scheme:** A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. Re-

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

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

3.3 ENTITIES INTO WHICH FDI CAN BE MADE

3.3.1 FDI in an Indian Company

(i) Indian companies including those which are micro and small enterprises (MSEs) can issue capital against FDI.

3.3.2 FDI in Partnership Firm / Proprietary Concern:

- (i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided;
 - (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
 - (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
 - (c) Amount invested shall not be eligible for repatriation outside India.
- (ii) Investments with repatriation benefits: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.
- (iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

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

3.3.3 FDI in Venture Capital Fund (VCF): FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs) /Venture Capital Funds (VCFs) /other companies, as stated in paragraph 3.1.6 of this Circular. If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) cannot invest in such domestic VCF under the automatic route of the FDI scheme and would be allowed subject to approval of the FIPB. However, if a domestic VCF is set-up as an incorporated company under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms, etc.

3.3.4 FDI in Trusts: FDI in Trusts other than VCF is not permitted.

3.3.5 FDI in other Entities²: FDI in resident entities other than those mentioned above is not permitted.

3.4 CONDITIONS ON ISSUE/TRANSFER OF SHARES

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

² Review of FDI policy to allow FDI in LLPs is under consideration of the Government.

consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

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

- a. the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognised stock exchange in India;
- b. the fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognised stock exchange in India ; and
- c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

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

3.4.4 Transfer of shares and convertible debentures –

- (i) Subject to FDI sectoral policy, non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:
 - (a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
 - (b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
 - (c) A person resident outside India can transfer any security to a person resident in India by way of gift.

- (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
- (e) A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than financial services sectors (i.e. Banks, NBFC, Insurance, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the guidelines given in **Annex-2**.
- (f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in **Annex-2**.
- (g) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non-Resident/Non-Resident Indian, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
- (h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.
- (ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category – I bank

at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC-TRS.

- (iii) **Escrow:** AD Category – I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers / exit offers and delisting of shares. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/ provisions of the Companies Act, 1956 will be applicable.

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

- (i) The following instances of transfer of capital instruments from resident to non-residents by way of sale require prior approval of RBI:
 - (a) Transfer of capital instruments of an Indian company engaged in financial services sector (i.e. Banks, NBFCs, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), Insurance companies, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
 - (b) Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997.
 - (c) The activity of the Indian company whose capital instruments are being transferred falls outside the automatic route and the approval of the Government has been obtained for the said transfer.
 - (d) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
 - (e) Transfer of capital instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category – I bank for necessary due diligence , within 60 days from the date of receipt of the full and final amount of consideration.

- (ii) The transfer of capital instruments of companies engaged in sectors falling under the Government Route from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI.
- (iii) A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents mentioned in **Annex-3** should be enclosed. Reserve Bank considers the following factors while processing such applications:
 - (a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
 - (b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
 - (c) The applicable sectoral cap limit in the Indian company is not breached.
 - (d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time. The current list is reproduced in **Annex-4**.
 - (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during the calendar year.
 - (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

3.4.6 Conversion of ECB/Lumpsum Fee/Royalty into Equity

- (i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements.
 - (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;

- (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
 - (c) Pricing of shares is as per the provision of para 3.4.2 above;
 - (d) Compliance with the requirements prescribed under any other statute and regulation in force; and
 - (e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- (ii) General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty, subject to entry route, sectoral cap and pricing guidelines (as per the provision of para 3.4.2 above) and compliance with applicable tax laws.
- (iii) Issue of equity shares under the FDI policy is allowed under the Government route for the following categories:
- (I) import of capital goods/ machinery/ equipment (including second-hand machinery), subject to compliance with the following conditions:
 - (a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/ Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.
 - (b) There is an independent valuation of the capital goods/machinery/equipments (including second-hand machinery) by a third party entity, preferably by an independent valuer from the country of import alongwith production of copies of documents/certificates issued by the customs authorities towards assessment of the fair-value of such imports.
 - (c) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.
 - (d) All such conversions of import payables for capital goods into FDI being done within 180 days from the date of shipment of goods.
 - (II) pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:
 - (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
 - (b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.

- (c) Payments being made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be allowed.
- (d) The capitalization being done within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

General conditions:

- (i) All requests for conversion should be accompanied by a special resolution of the company.
- (ii) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

3.5 **ISSUE OF INSTRUMENTS**

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

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

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

3.5.3 Additional allocation of rights share by residents to non-residents – Existing non-resident shareholders are allowed to apply for issue of additional shares/ fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

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

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

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

- (i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:
 - (a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and
 - (b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.
- (ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.

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

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

CHAPTER 4: CALCULATION, ENTRY ROUTE, CAPS, ENTRY CONDITIONS, ETC. OF INVESTMENT

4.1 CALCULATION OF TOTAL FOREIGN INVESTMENT I.E. DIRECT AND INDIRECT FOREIGN INVESTMENT IN INDIAN COMPANIES.

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

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

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

- (i) **Counting the Direct Foreign Investment:** All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.
- (ii) **Counting of indirect foreign Investment:**
 - (a) The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are ‘owned **and** controlled’ by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens .

(b) For cases where condition (a) above is not satisfied or if the investing company is owned **or** controlled by 'non resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment,

Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidy is owned by the holding company.

Illustration

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

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

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

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

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

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

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

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

(v) **Additional conditions:**

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

(b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such *inter-se* agreements for determining ownership and control when considering the case for granting approval for foreign investment.

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

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

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

(I) In the case of an individual shareholder,

(aa) The individual shareholder,

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

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

- (II) In the case of an Indian company,
- (aa) The Indian company
 - (bb) A group of Indian companies under the same management and ownership control.
- (B) For the purpose of this Clause, “Indian company” shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.
- (C) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (i) and (ii) of clause 4.1.3(v)(d)(1) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.
- (e) If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

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

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

4.2 ENTRY ROUTES FOR INVESTMENT:

4.2.1 Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through two routes; the Automatic Route and the Government

Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from the RBI or Government of India for the investment. Under the Government Route, prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required. Proposals for foreign investment under Government route as laid down in the FDI policy from time to time, are considered by the Foreign Investment Promotion Board (FIPB) in Department of Economic Affairs (DEA), Ministry of Finance.

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

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

- (i) An Indian company is being established with foreign investment and is owned by a non-resident entity or
- (ii) An Indian company is being established with foreign investment and is controlled by a non-resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or
- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
- (v) It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

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

4.3 CAPS ON INVESTMENTS

4.3.1 Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as provided/permitted in the FDI policy. Thus while investment are prohibited in some sectors/activities, there are restrictions/conditions/caps on the investment in certain other sector/activities. The caps in various sector(s)/activity are detailed out in Chapter 5 of this circular.

4.4 ENTRY CONDITIONS ON INVESTMENT

4.4.1 Investments can be permitted to be made by non-residents in the capital of a resident entity in certain sectors/activity with entry conditions. These entry conditions would be applicable for investment only by non-resident entities. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this circular.

4.5 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS

4.5.1 Besides the entry conditions on foreign investment, the investment/investors need to conform to all relevant sectoral laws, regulations, rules etc.

4.5.2 The national security/internal security related conditions as contained in relevant statutes or notifications of the Government will also have to be complied with.

4.5.3 The State Governments/Union Territories have regulations in relation to the subjects in their legislative domain. These regulations also have to be met/complied with.

4.6 FOREIGN INVESTMENT INTO/ DOWNSTREAM INVESTMENT BY INDIAN COMPANIES

4.6.1 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Paragraph 4.1, which enables determination of total foreign investment in any/all Indian Companies.

4.6.2 For the purpose of this chapter,

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

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

4.6.3.1 Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in paragraph 5.2.18 of this Circular. Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

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

Note: Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which such companies are operating.

4.6.4 **Downstream investment by an Indian company which is owned and/or controlled by non resident entity/ies:**

4.6.4.1 Downstream investment by an Indian company, which is owned and/ or controlled by non-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 Indian company into which the downstream investment is being made, is operating.

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

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

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

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

(iv) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream companies, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 4.6.3 and 4.6.4.1.

4.7 GUIDELINES FOR CONSIDERATION OF FDI PROPOSALS BY FIPB:

4.7.1 The following guidelines are laid down to enable the FIPB to consider the proposals for FDI and formulate its recommendations.

4.7.2 All applications should be put up before the FIPB by its Secretariat within 15 days and it should be ensured that comments of the administrative ministries are placed before the Board either prior to/or in the meeting of the Board.

4.7.3 Proposals should be considered by the Board keeping in view the time frame of thirty (30) days for communicating Government decision.

4.7.4 In cases in which either the proposal is not cleared or further information is required in order to obviate delays presentation by applicant in the meeting of the FIPB should be resorted to.

4.7.5 While considering cases and making recommendations, FIPB should keep in mind the sectoral requirements and the sectoral policies vis-à-vis the proposal (s).

4.7.6 FIPB would consider each proposal in its totality.

4.7.7 The Board should examine the following while considering proposals submitted to it for consideration:

- (i) whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;
- (ii) whether the proposal involves any export projection and if so the items of export and the projected destinations;
- (iii) Whether the proposal has any strategic or defence related considerations.

4.7.8 While considering proposals the following may be prioritized:

- (i) Items falling in infrastructure sector;
- (ii) Items which have an export potential;
- (iii) Items which have large scale employment potential and especially for rural people;
- (iv) Items which have a direct or backward linkage with agro business/farm sector;
- (v) Items which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment;
- (vi) Proposals which result in induction of technology or infusion of capital.

4.7.9 The following should be especially considered during the scrutiny and consideration of proposals.

- (i) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any;
- (ii) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 76% or more) joint venture;
- (iii) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company;
- (iv) In the case of fresh induction offerings/NRI equity and/or in cases of enlargement of foreign/NRI equity, in existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not;
- (v) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement (i.e. whether by increase of paid up capital/authorized capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality;
- (vi) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines;
- (vii) Whether the activity is an industrial or a service activity or a combination of both;
- (viii) Whether the items of activity involves any restriction by way of reservation for the Micro & Small Enterprises sector;
- (ix) Whether there are any sectoral restrictions on the activity;
- (x) Whether the proposal involves import of items which are either hazardous/banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

4.7.10 No condition specific to the letter of approval issued to a non-resident investor would be changed or additional condition imposed subsequent to the issue of a letter of approval. This would not prohibit changes in general policies and, regulations applicable to the industrial sector.

4.8 CONSTITUTION OF FIPB :

4.8.1 FIPB comprises of the following Core Group of Secretaries to the Government of India:

- (i) Secretary to Government, Department of Economic Affairs, Ministry of Finance
– Chairperson
- (ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
- (iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry
- (iv) Secretary to Government, Economic Relations, Ministry of External Affairs
- (v) Secretary to Government, Ministry of Overseas Indian Affairs.

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

4.9 APPROVAL LEVELS FOR CASES UNDER GOVERNMENT ROUTE

4.9.1 The following approval levels shall operate for proposals involving FDI under the Government route i.e. requiring prior Government approval:

- (i) The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.1200 crore.
- (ii) The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of CCEA. The FIPB Secretariat in DEA will process the recommendations of FIPB to obtain the approval of Minister of Finance and CCEA.
- (iii) The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Minister of Finance (in-charge of FIPB).

4.10 CASES WHICH DO NOT REQUIRE FRESH APPROVAL

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

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

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

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

4.11 ONLINE FILING OF APPLICATIONS FOR FIPB /GOVERNMENT'S APPROVAL

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

CHAPTER 5: POLICY ON ROUTE, CAPS AND ENTRY CONDITIONS:

5.1 PROHIBITION ON INVESTMENT IN INDIA.

FDI is prohibited in the following activities/sectors:

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

Besides foreign investment in any form, **foreign technology collaboration in any form** including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

5.2 SECTOR-SPECIFIC POLICY FOR FDI

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

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
AGRICULTURE			
5.2.1	Agriculture & Animal Husbandry		
	a) Floriculture, Horticulture, and	100%	Automatic

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>Cultivation of Vegetables & Mushrooms under controlled conditions;</p> <p>b) Development and production of Seeds and planting material;</p> <p>c) Animal Husbandry (including of breeding of dogs), Pisciculture, Aquaculture under controlled conditions; and</p> <p>d) services related to agro and allied sectors</p> <p>Note: Besides the above, FDI is not allowed in any other agricultural sector/activity</p>		
5.2.1.1	Other conditions:		
	<p>For companies dealing with development of transgenic seeds/vegetables, the following conditions apply:</p> <p>(i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.</p> <p>(ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.</p> <p>(iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.</p> <p>(iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).</p> <p>(v) Import of materials shall be in accordance with National Seeds Policy.</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>(vi) The term “under controlled conditions” covers the following:</p> <ul style="list-style-type: none"> ❖ ‘Cultivation under controlled conditions’ for the categories of Floriculture, Horticulture, Cultivation of vegetables and Mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically. ❖ In case of Animal Husbandry, scope of the term ‘under controlled conditions’ includes – <ul style="list-style-type: none"> • Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems. • Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc. ❖ In the case of pisciculture and aquaculture, ‘under controlled conditions’ includes – <ul style="list-style-type: none"> • Aquariums • Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control. 		
5.2.2	Tea Plantation		
5.2.2.1	Tea sector including tea plantations Note: Besides the above, FDI is not allowed in any other plantation	100%	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	sector/activity		
5.2.2.2	Other conditions:		
	(i) Compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of 5 years		
	(ii) Prior approval of the State Government concerned in case of any future land use change.		
INDUSTRY			
	MINING		
5.2.3	MINING		
5.2.3.1	Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals(Development & Regulation) Act, 1957.	100%	Automatic
5.2.3.2	Coal and Lignite		
	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973	100%	Automatic
	(2) Setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
5.2.3.3	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities		
5.2.3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral	100%	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	regulations and the Mines and Minerals (Development and Regulation Act 1957)		
5.2.3.3.2	Other conditions:		
	<p>India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as “prescribed substances” under the Atomic Energy Act, 1962.</p> <p>Under the Industrial Policy Statement 1991, mining and production of minerals classified as “prescribed substances” and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422 dated 6th October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).</p> <p>Vide Notification No. S.O.61(E) dated 18.1.2006, the Department of Atomic Energy re-notified the list of “prescribed substances” under the Atomic Energy Act 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds and minerals/concentrates including Zircon, were removed from the list of “prescribed substances”.</p> <p>(i) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.:</p> <p>(A) value addition facilities are set up within India along with transfer of technology;</p> <p>(B) disposal of tailings during the mineral separation shall be carried out</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.</p> <p>(ii) FDI will not be allowed in mining of “prescribed substances” listed in the Notification No. S.O. 61(E) dated 18.1.2006 issued by the Department of Atomic Energy.</p> <p>Clarification: (1) For titanium bearing ores such as Ilmenite, Leucosene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product.</p> <p>(2) The objective is to ensure that the raw material available in the country is utilized \ for setting up downstream industries and the technology available internationally is available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.</p>		
	<u>MANUFACTURING</u>		
5.2.4	Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)		
5.2.4.1	<p>FDI in MSEs will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	provisions of section 11 of the Industries (Development & Regulation) Act 1951.		
5.2.5	DEFENCE		
5.2.5.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act 1951 ³	26%	Government
5.2.5.2	Other conditions:		
	<p>(i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence.</p> <p>(ii) The applicant should be an Indian company / partnership firm.</p> <p>(iii) The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company / partnership firm being resident Indians.</p> <p>(iv) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.</p> <p>(v) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.</p> <p>(vi) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the</p>		

³ DIPP had recently released a Discussion paper calling for views/suggestions from the stakeholders to review the extant policy on FDI in Defence sector

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.</p> <p>(vii) There would be a three-year lock-in period for transfer of equity from one non-resident investor to another non-resident investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the FIPB and the Government.</p> <p>(viii) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.</p> <p>(ix) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.</p> <p>(x) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.</p> <p>(xi) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.</p> <p>(xii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.</p> <p>(xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.</p> <p>(xiv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons / entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.</p> <p>(xv) Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.</p>		
	<u>POWER</u>		
5.2.6	Electric Generation, Transmission, Distribution and Trading		
5.2.6.1	i) Generation and transmission of electric energy produced in-hydro electric, coal/lignite based thermal,	100%	Automatic

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>oil based thermal and gas based thermal power plants.</p> <p>ii) Non-Conventional Energy Generation and Distribution.</p> <p>iii) Distribution of electric energy to households, industrial, commercial and other users and</p> <p>iv) Power Trading</p> <p>Note 1: All the above would be subject to the provisions of the Electricity Act 2003.</p> <p>Note 2: (i) to (iii) above do not include generation, transmission and distribution of electricity produced in atomic power plant/atomic energy since private investment in this sector/activity is prohibited and is reserved for public sector.</p>		
<u>SERVICES SECTOR</u>			
5.2.7	Civil Aviation Sector		
5.2.7.1	<p>The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services / Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.</p> <p>For the purposes of the Civil Aviation sector:</p> <p>(i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;</p> <p>(ii) "Aerodrome" means any definite or limited ground or water area</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;</p> <p>(iii)"Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;</p> <p>(iv)"Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;</p> <p>(v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;</p> <p>(vi)"Helicopter" means a heavier-than -air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;</p> <p>(vii) "Scheduled air transport service", means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;</p> <p>(viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Cargo airlines;</p> <p>(ix)"Cargo" airlines would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;</p> <p>(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;</p> <p>(xi)"Ground Handling" means (i) ramp handling , (ii) traffic handling both</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.		
5.2.7.2	Policy for FDI in Civil Aviation sector The policy for FDI in the Civil Aviation Sector would be subject to the Aircraft Rules, 1934 as amended from time to time, Civil Aviation Requirements, and Aeronautical Information Circulars as notified by the Ministry of Civil Aviation.		
5.2.7.2.1	Airports		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic up to 74% Government route beyond 74%
5.2.7.2.2	Air Transport Services		
	(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services. (b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled and Non-Scheduled Air Transport Services except Cargo airlines. (c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.		
	(1) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
			74%
	(3) Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
5.2.7.2.3	Other services under Civil Aviation sector		
	(1) Ground Handling Services subject to sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
5.2.8	Asset Reconstruction Companies		
5.2.8.1	'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).		
5.2.8.2	FDI limit	49% of paid-up capital of ARC	Government
5.2.8.3	Other conditions:		
	<p>(i) Persons resident outside India, other than Foreign Institutional Investors (FIIs), can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs.</p> <p>(ii) However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest upto 49 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.</p> <p>(iii) Any individual investment of more than 10% would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	Assets and Enforcement of Security Interest Act, 2002.		
5.2.9	Banking –Private sector		
5.2.9.1	Banking –Private sector	74% including investment by FIIs	Automatic up to 49% Government route beyond 49% and up to 74%
5.2.9.2	Other conditions:		
	<p>(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.</p> <p>(2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.</p> <p>(3) The stipulations as above will be applicable to all investments in existing private sector banks also.</p> <p>(4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs and NRIs will be as follows:</p> <p>(i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent of the total paid-up capital, aggregate limit for all FIIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.</p> <p>(a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital.</p> <p>(b) In the case of NRIs, as hitherto, individual holding is restricted to 5</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.</p> <p>(c) Applications for foreign direct investment (FDI route) in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.</p> <p>(d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para 4.2.2 above as applicable.</p> <p>(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.</p> <p>(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to non-resident investors as well.</p> <p>(ii) Setting up of a subsidiary by foreign banks</p> <p>(a) Foreign banks will be permitted to either have branches or subsidiaries but not both.</p> <p>(b) Foreign banks regulated by banking supervisory authority in the</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.</p> <p>(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.</p> <p>(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.</p> <p>(e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.</p> <p>(f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI</p> <p>(g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.</p> <p>(iii) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.</p>		
5.2.10	Banking- Public Sector		
5.2.10.1	Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also	20% (FDI and Portfolio Investment)	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	applicable to the State Bank of India and its associate Banks.		
5.2.11	Broadcasting		
5.2.11.1	Terrestrial Broadcasting FM (FM Radio) subject to such terms and conditions as specified from time to time by Ministry of Information and Broadcasting for grant of permission for setting up of FM Radio Stations	20% (FDI, NRI & PIO investments and portfolio investment)	Government
5.2.11.2	Cable Network subject to Cable Television Network Rules, 1994 and other conditions as specified from time to time by Ministry of Information and Broadcasting	49% (FDI, NRI & PIO investments and portfolio investment)	Government
5.2.11.3	Direct –to-Home subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting	49% (FDI, NRI & PIO investments and portfolio investment) Within this limit, FDI component not to exceed 20%	Government
5.2.11.4	Headend-In-The-Sky (HITS) Broadcasting Service refers to the multichannel downlinking and distribution of television programme in C-Band or Ku Band wherein all the pay channels are downlinked at a central facility (Hub/teleport) and again uplinked to a satellite after encryption of channel. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to the subscribers by using a land based transmission system comprising of infrastructure of cable/optical fibres network.		
5.2.11.4.1	FDI limit in (HITS) Broadcasting Service is subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting.	74% (total direct and indirect foreign investment including portfolio and FDI)	Automatic up to 49% Government route beyond 49% and up to 74%
5.2.11.5	Setting up hardware facilities such as up-linking, HUB etc.		
	(1) Setting up of Up-linking HUB/ Teleports	49% (FDI & FII)	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(2) Up-linking a Non-News & Current Affairs TV Channel	100%	Government
	(3) Up-linking a News & Current Affairs TV Channel subject to the condition that the portfolio investment from FII/ NRI shall not be “persons acting in concert” with FDI investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997	26% (FDI & FII)	Government
5.2.11.5.1	Other conditions:		
	<p>(i) All the activities at (1), (2) and (3) above will be further subject to the condition that the Company permitted to uplink the channel shall certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.</p> <p>(ii) FDI for Up-linking TV Channels will be subject to compliance with the Up-linking Policy notified by the Ministry of Information & Broadcasting from time to time.</p>		
5.2.12	Commodity Exchanges		
5.2.12.1	<p>1 Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.</p> <p>2 For the purposes of this chapter,</p> <p>(i) “Commodity Exchange” is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.</p> <p>(ii) “recognized association” means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>(iii) “Association” means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.</p> <p>(iv) “Forward contract” means a contract for the delivery of goods and which is not a ready delivery contract.</p> <p>(v) “Commodity derivative” means-</p> <ul style="list-style-type: none"> • a contract for delivery of goods, which is not a ready delivery contract; or • a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities. 		
5.2.12.2	Policy for FDI in Commodity Exchange	49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Government
5.2.12.3	Other conditions:		
	<p>(i) FII purchases shall be restricted to secondary market only and</p> <p>(ii) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies.</p>		
5.2.13	Development of Townships, Housing, Built-up infrastructure and Construction-development projects		
5.2.13.1	Townships, housing, built-up infrastructure and construction-development projects (which would	100%	Automatic

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure)		
5.2.13.2	<p>Investment to be made will be subject to the following conditions:</p> <p>(1) Minimum area to be developed under each project would be as under:</p> <ul style="list-style-type: none"> (i) In case of development of serviced housing plots, a minimum land area of 10 hectares (ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts (iii) In case of a combination project, any one of the above two conditions would suffice <p>(2) Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.</p> <p>(3) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. Original investment means the entire amount brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each installment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.</p> <p>(4) At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, “undeveloped plots” will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.</p> <p>(5) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.</p> <p>(6) The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned.</p> <p>(7) The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.</p> <p>Note:</p> <p>(i) The conditions at (1) to (4) above would not apply to Hotels & Tourism, Hospitals and SEZ's.</p> <p>(ii) For investment by NRIs, the conditions at (1) to (4) above would not apply.</p> <p>(iii) 100% FDI is allowed under the automatic route in development of Special Economic Zones (SEZ) without the conditionalities at (1) to (4) above. This</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	will be subject to the provisions of Special Economic Zones Act 2005 and the SEZ Policy of the Department of Commerce. (iv) FDI is not allowed in Real Estate Business.		
5.2.14	Credit Information Companies (CIC)		
5.2.14.1	Credit Information Companies	49% (FDI & FII)	Government
5.2.14.2	Other Conditions:		
	<p>(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.</p> <p>(2) Foreign investment is permitted under the Government route, subject to regulatory clearance from RBI.</p> <p>(3) Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.</p> <p>(4) Such FII investment would be permitted subject to the conditions that:</p> <p>(a) No single entity should directly or indirectly hold more than 10% equity.</p> <p>(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and</p> <p>(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.</p>		
5.2.15	Industrial Parks - both setting up and already established Industrial Parks	100%	Automatic
5.2.15.1	<p>(i) “Industrial Park” is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.</p> <p>(ii) “Infrastructure” refers to facilities required for functioning of units</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.</p> <p>(iii)“Common Facilities” refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.</p> <p><u>(iv)“Allocable area” in the Industrial Park means-</u></p> <p>(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.</p> <p>(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.</p> <p>(c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.</p> <p>(v) “Industrial Activity” means manufacturing, electricity, gas and water supply, post and telecommunications, software publishing, consultancy and supply, data processing, database activities and distribution of electronic content, other computer related activities,</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.		
5.2.15.2	FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 5.2.13 above, provided the Industrial Parks meet with the under-mentioned conditions: (i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area; (ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.		
5.2.16	Insurance		
5.2.16.1	Insurance	26%	Automatic
5.2.16.2	Other Conditions: (1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1999, is allowed under the automatic route. (2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.		
5.2.17	Infrastructure Company in the Securities Market		
5.2.17.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Government
5.2.17.2	Other Conditions:		
5.2.17.2.1	FII can invest only through purchases in the secondary market		
5.2.18	Non-Banking Finance Companies (NBFC)		
5.2.18.1	Foreign investment in NBFC is allowed under the automatic route in	100%	Automatic

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>only the following activities:</p> <ul style="list-style-type: none"> (i) Merchant Banking (ii) Under Writing (iii) Portfolio Management Services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodian Services (x) Factoring (xi) Credit Rating Agencies (xii) Leasing & Finance (xiii) Housing Finance (xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit 		
5.2.18.2	Other Conditions:		
	<p>(1) Investment would be subject to the following minimum capitalisation norms:</p> <ul style="list-style-type: none"> (i) US \$0.5 million for foreign capital upto 51% to be brought upfront (ii) US \$ 5 million for foreign capital more than 51% and upto 75% to be 		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>brought upfront</p> <p>(iii) US \$ 50 million for foreign capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.</p> <p>(iv) 100% foreign owned NBFCs with a minimum capitalisation of US\$ 50 million can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by para 4.6.4.1, therefore, shall not apply to downstream subsidiaries.</p> <p>(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.</p> <p>(vi) Non- Fund based activities : US \$0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:</p> <p style="padding-left: 40px;">It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.</p> <p>Note: The following activities would be classified as Non-Fund Based activities:</p> <p>(a) Investment Advisory Services</p> <p>(b) Financial Consultancy</p> <p>(c) Forex Broking</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>(d) Money Changing Business</p> <p>(e) Credit Rating Agencies</p> <p>(vii) This will be subject to compliance with the guidelines of RBI.</p> <p>Note: Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.</p> <p>(2) The NBFC will have to comply with the guidelines of the relevant regulator/ s, as applicable</p>		
5.2.19	Petroleum & Natural Gas Sector		
5.2.19.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies	100%	Automatic
5.2.19.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Government
5.2.20	Print Media		
5.2.20.1	Publishing of Newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
5.2.20.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
5.2.20.2.1	Other Conditions:		
	<p>(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.</p> <p>(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008.</p>		
5.2.20.3	Publishing/printing of Scientific and Technical Magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
5.2.20.4	Publication of facsimile edition of foreign newspapers	100%	Government
5.2.20.4.1	Other Conditions:		
	<p>(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.</p> <p>(ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956.</p> <p>(iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.</p>		
5.2.21	Security Agencies in Private sector		
5.2.21.1	The 'Private Security Agencies (Regulation) Act, 2005' regulates the operations of private security agencies. Under Section 6(2) of the above Act,		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>“A company, firm or an association of persons shall not be considered for issue of a licence under this Act, if, it is not registered in India, or is having a proprietor or a majority shareholder, partner or director, who is not a citizen of India”. As such, under the provisions of this Act:</p> <ul style="list-style-type: none"> • a foreign company cannot be considered for a license under the Act • only a firm registered in India can be eligible for a license • to be eligible for a license under the Act, a firm cannot have a foreign director/partner • majority shareholder cannot be a foreigner-i.e. foreign shareholding would be restricted to a maximum of 49% under the Government route 		
5.2.22	Satellites – Establishment and operation		
5.2.22.1	Satellites – Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government
5.2.23	<p>Telecommunication Investment caps and other conditions for specified services are given below. However, licensing and security requirements notified by the Department of Telecommunications will need to be complied with for all services.</p>		
5.2.23.1	(i) Telecom services	74%	Automatic up to 49% Government route beyond 49% and up to 74%
5.2.23.1.1	Other conditions:		
	<p>(1) General Conditions:</p> <p>(i) This is applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>Services (GMPCS) and other value added Services.</p> <p>(ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. In any case, the 'Indian' shareholding will not be less than 26 percent.</p> <p>(iii) FDI in the licensee company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.</p> <p>(iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.</p> <p>(v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.</p> <p>(2) Security Conditions:</p> <p>(i) The Chief Officer In-charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.</p> <p>(ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor (Department of Telecommunications) would be required if such information is to be</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>provided to anybody else.</p> <p>(iii) For security reasons, domestic traffic of such entities as may be identified /specified by the licensor shall not be hauled/routed to any place outside India.</p> <p>(iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.</p> <p>(v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.</p> <p>(vi) The majority Directors on the Board of the company shall be Indian citizens.</p> <p>(vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.</p> <p>(viii) The Company shall not transfer the following to any person/place outside India:-</p> <p style="padding-left: 40px;">(a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and</p> <p style="padding-left: 40px;">(b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).</p> <p>(ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.</p> <p>(x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.</p> <p>(xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Ministry of Home Affairs.</p> <p>(xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.</p> <p>(xiii) The licensee company is not allowed to use remote access facility for monitoring of content.</p> <p>(xiv) Suitable technical device should be made available at Indian end to the designated security agency /licensor in which a mirror image of the remote access information is available on line for monitoring purposes.</p> <p>(xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.</p> <p>(xvi) The telecom service providers should ensure that necessary</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.</p> <p>(xvii)The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.</p> <p>(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.</p> <p>(xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.</p> <p>(xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.</p> <p>(xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this circular irrespective of the level of FDI.</p> <p>(xxii)Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.</p> <p>(3) The above General Conditions and Security Conditions shall also be applicable to the companies operating telecom service(s) with the FDI cap of</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	49%. (4) All the telecom service providers shall submit a compliance report on the aforesaid conditions to the licensor on 1 st day of July and January on six monthly basis.		
5.2.23.2	(a) ISP with gateways (b) ISP's not providing gateways i.e without gate-ways (both for satellite and marine cables) Note: The new guidelines of August 24, 2007 Department of Telecommunications provide for new ISP licenses with FDI upto 74%. (c) Radio paging (d) End-to-End bandwidth	74%	Automatic up to 49% Government route beyond 49% and up to 74%
5.2.23.3	(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I) (b) Electronic Mail (c) Voice Mail Note: Investment in all the above activities is subject to the conditions that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.	100%	Automatic up to 49% Government route beyond 49%
5.2.24	Trading		
5.2.24.1	(i) Cash & Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)	100%	Automatic
5.2.24.1.1	Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.</p>		
5.2.24.1.2	<p>Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):</p> <p>(a) For undertaking WT, requisite licenses/registration/ permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.</p> <p>(b) Except in case of sales to Government, sales made by the wholesaler would be considered as ‘cash & carry wholesale trading/wholesale trading’ with valid business customers, only when WT are made to the following entities:</p> <p style="padding-left: 40px;">(I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or</p> <p style="padding-left: 40px;">(II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/ Government Body/ Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or</p> <p style="padding-left: 40px;">(III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or</p>		

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	<p>(IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.</p> <p>Note: An Entity to whom WT is made, may fulfill any one of the 4 conditions.</p> <p>(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.</p> <p>(d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture</p> <p>(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.</p> <p>(f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.</p>		
5.2.24.2	E-commerce activities	100%	Automatic
5.2.24.2.1	E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
5.2.24.3	Test marketing of such items for which a company has approval for manufacture, provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facility commences simultaneously with test marketing.	100%	Government

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
5.2.24.4	Single Brand product trading ⁴	51%	Government
	<p>(1) Foreign Investment in Single Brand product trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>(2) FDI in Single Brand products retail trade would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a ‘Single Brand’ only.</p> <p>(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.</p> <p>(c) ‘Single Brand’ product-retailing would cover only products which are branded during manufacturing.</p> <p>(3) Application seeking permission of the Government for FDI in retail trade of ‘Single Brand’ products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The application would specifically indicate the product/ product categories which are proposed to be sold under a ‘Single Brand’. Any addition to the product/ product categories to be sold under ‘Single Brand’ would require a fresh approval of the Government.</p> <p>(4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the products proposed to be sold satisfy the notified guidelines, before being considered by the FIPB for Government approval.</p>		
5.2.25	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.		

⁴ DIPP had recently released a Discussion paper calling for views/suggestions from the stakeholders to review the extant policy on FDI in Multi-brand Retail

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
5.2.25.1	100% FDI is allowed under the Government route.		
5.2.25.2	This will be subject to existing Law i.e Indian Post Office Act 1898 and exclusion of activity relating to the distribution of letters.		

Note:

Minimum capitalization includes share premium received alongwith the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement;

CHAPTER 6: REMITTANCE, REPORTING AND VIOLATION

6.1 REMITTANCE AND REPATRIATION

6.1.1 Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies:

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

(ii) AD Category – I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

(iii) Remittance on winding up/liquidation of Companies

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

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

6.1.2 Repatriation of Dividend: Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

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

6.2. REPORTING OF FDI

6.2.1 Reporting of Inflow

- (i) An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form enclosed as **Annex-5**.
- (ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category – I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as **Annex-6**) on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

6.2.2 Reporting of issue of shares

- (i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures / fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in **Annex-1-A**, not later than 30 days from the date of issue of shares.
- (ii) Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of

the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:

- (a) A certificate from the Company Secretary of the company certifying that:
 - (A) all the requirements of the Companies Act, 1956 have been complied with;
 - (B) terms and conditions of the Government's approval, if any, have been complied with;
 - (C) the company is eligible to issue shares under these Regulations; and
 - (D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

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

- (b) A certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.
- (d) Annual return on Foreign Liabilities and Assets (**Annex 1-B**) should be filed on an annual basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information submitted by 31st July will pertain to all the investments made in the previous years up to March 31). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct / portfolio investment may be separately indicated.
- (e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation / merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty / lumpsum technical know-how fee / import of capital goods by units in SEZs, has to be reported in Form FC-GPR.

6.2.3 Reporting of transfer of shares

Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS (**Annex-7**). The Form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. The AD Category – I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

6.2.4 Reporting of Non-Cash

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

- (i) In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.
- (ii) In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

6.2.5 Reporting of FCCB/ADR/GDR Issues

The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the Form enclosed as **Annex-8**, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the Form enclosed as **Annex - 9**, to the Reserve Bank within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per the extant Reserve Bank guidelines.

6.3 ADHERENCE TO GUIDELINES/ORDERS AND CONSEQUENCES OF VIOLATION

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

6.3.1 Penalties

- (i) If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/FIPB/Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.
- (ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means any body corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
- (iii) Any Adjudicating Authority adjudging any contraventions under 6.3.1(i), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

6.3.2 Adjudication and Appeals

- (i) For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication

Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

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

6.3.3 Compounding Proceedings

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

FC-GPR

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

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	<input type="text"/>
Date of issue of shares / convertible debentures	<input type="text"/>

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

2.	Description of the main business activity NIC Code	
	Location of the project and NIC code for the district where the project is located	
	Percentage of FDI allowed as per FDI policy	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable)	Automatic Route / Approval Route
3	Details of the foreign investor / collaborator*	
	Name Address Country Constitution / Nature of the investing Entity [Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF) ⁵ 9. Partnership / Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)] Date of incorporation	

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

⁵ SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

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

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

(c)	Break up of premium	Amount
	Control Premium	
	Non competition fee	
	Others [@]	
	Total	

[@] please specify the nature

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

** before issue of shares

*(Please indicate as applicable)

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

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

We hereby declare that:

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

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

a) Foreign entity/entities—(other than individuals), to whom we have issued shares have existing joint venture or technology transfer or trade mark agreement in India in the same field and Conditions stipulated at Para 4.2 of Consolidated FDI policy Circular of Government of India have been complied with.

OR

Foreign entity/entities—(other than individuals), to whom we have issued shares do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field. For the purpose of the 'same' field, 4 digit NIC 1987 code would be relevant.

b) We are not an Industrial Undertaking manufacturing items reserved for small sector.

OR

We are an Industrial Undertaking manufacturing items reserved for small sector and the investment limit of 24 % of paid-up capital has been observed/ requisite approvals have been obtained.

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

OR

Shares issued are bonus.

OR

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

OR

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

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY⁶ OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT:

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

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

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

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

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FC-GPR:

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

R																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

⁶ If the company doesn't have a full time Company Secretary, a certificate from a practicing Company Secretary may be submitted.

Annual Return on Foreign Liabilities and Assets

(Return to be filled under A.P. (DIR Series) Circular No.45 dated March 15, 2011 to the Department of Statistics and Information Management, RBI, Mumbai)

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

Section I: Identification Particulars

For RBI's use

1. Name and Address of the Indian Company

COMPANY CODE				

City: _____ Pin: _____

State: _____

2. Income-Tax allotted PAN Number of Company:

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3. Registration No given by the Registrar of Companies:

--	--	--	--	--	--	--	--	--	--	--	--

4. Name of the CONTACT PERSON : _____ DESIGNATION: _____

Tel.No. (with STD code): _____ Fax: _____

e-mail: _____

5. Account closing date: (dd/mm/yy) _____ Web-site (if any): _____

6. In case of change in Company Name and/or activity, specify the old and new Company Name and activity:

Old Company Name : _____ New Company Name _____

Effective Date _____

Old Activity: _____ New Activity _____

7. Nature of Business: Please tick (✓) the appropriate group of activity to which your principal line of business pertains and also mention, if possible, the NIC code in the bracket.

Industry	Revenue (%)	Industry	Revenue (%)	Industry	Revenue (%)	Industry	Revenue (%)
1. Power		2. Electrical &		3. Non - financial		4. Financial Services	

()		Electronics ()		services ()		()	
5. Telecom ()		6. Hotels & Tourism ()		7. Metallurgical Industry & Mining ()		8. Food Processing Industry ()	
9. Transportation ()		10. Petroleum & Natural Gas ()		11. Chemicals (other than fertilizers) ()		12. Construction ()	
13. Software and ITES/BPO ()		14. Pharmaceutical ()		15. Other ()			

For RBI's use (Industry Code)

--	--	--	--

8. Whether your company is listed in India [please tick (✓)]?

Yes		No	
-----	--	----	--

9. Whether your company has any Foreign Collaboration?

If yes, please indicate whether it is (please tick the appropriate one)

Yes		No	
-----	--	----	--

(a) Technical collaboration		(b) Financial collaboration (foreign equity participation)		(c) Both	
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Block 1A : Total Paid up Capital of Indian Company

Item	End-March of previous FY		End-March current FY	
	Number of Shares	Amount in ₹ lakh	Number of Shares	Amount in ₹ lakh
1.0 Total Paid-up Capital [(i)+(ii)]				
(i) Ordinary/Equity Share				
(ii) Preference Share [(a)+(b)]				
(a) Participating				
(b) Non-participating				
2.0 Non-resident Equity Holdings				
1 Individuals				
2 Companies				
3 FIIs				
4 FVCIs				
5 Foreign Trusts				
6 Private Equity Funds				

7 Pension/ Provident Funds				
8 Sovereign Wealth Fund (SWF) [§]				
9 Partnership/ Proprietorship firms				
10 Financial Institutions				
11 NRIs/PIO				
12 Others (please specify)				

Note: FY: Financial Year

Block 1B : Free Reserves & Surplus and Retained Profit

Item	Amount in ₹ lakh as at the end – March of	
	Previous FY	Current FY
3.1 Free Reserves & Surplus as at the end of		
	Amount in ₹ lakh	
	During Previous FY	During Current FY
3.2 Profit (+) / Loss (-) after tax		
3.3 Dividend Declared (excluding tax on dividend)		
3.4 Retained Profit / loss (3.4 = 3.2 -3.3)		

Section II

FOREIGN LIABILITIES

2. Investments made under Foreign Direct Investment (FDI) scheme in India:

In case of listed companies, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, Own Fund of Book Value (OFBV) Method should be used (see the attached guidelines for details)

Block 2A: Foreign Direct Investment in India (10% or more Equity Participation)

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

If this block is **Non-NIL**, then please give the Name & Addresses of your subsidiary in India, if any, in BLOCK 9.

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	Equity holding (%)	Amount in ₹ lakh as at the end of		
				March Previous FY	December Current FY	March Current FY
	1.0 Equity Capital (1.0 = 1.2-1.1)					
	1.1 Claims on Direct Investor					
	1.2 Liabilities to Direct Investor					

	2.0 Other Capital(2.0 = 2.2-2.1)					
	2.1 Claims on Direct Investor					
	2.2 Liabilities to Direct Investor					
	3.0 Disinvestments in India during the year					

Note: (i) if investor is a company, then country is the country of incorporation;
(ii) Please use different sheet using same format to report different non-resident company/individual.

Block 2B: Foreign Direct Investment in India (Less than 10% Equity Holding)

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

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	Equity holding (%)	Amount in ₹ lakh as at the end of		
				March Previous FY	December Current FY	March Current FY
	1.0 Equity Capital (1.0 = 1.2-1.1)					
	1.1 Claims on Direct Investor					
	1.2 Liabilities to Direct Investor					
	2.0 Other Capital(2.0 = 2.2-2.1)					
	2.1 Claims on Direct Investor					
	2.2 Liabilities to Direct Investor					
	3.0 Disinvestments in India during the year					

Note: (i) if investor is a company, then country is the country of incorporation;
(ii) Please use different sheet using same format to report different non-resident company/individual.

3. Portfolio and Other Liabilities to Non-residents (i.e. position with unrelated parties)

Block 3A: Portfolio Investment

Please furnish here the outstanding investments by non-resident investors made under the **Portfolio Investment Scheme in India**. In case of listed companies, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, Own Fund of Book Value (OFBV) Method should be used. (*see the attached guidelines for details*)

Portfolio Investment	Country of non-resident investor	Amount in ₹ lakh as at the end of	
		March Previous FY	March Current FY
1.0 Equity Securities			
2.0 Debt Securities(2.0 = 2.1+2.2)			
2.1 Bonds and Notes (original maturity more than 1 year)			
2.2 Money Market Instruments (original maturity upto 1 year)			
3.0 Disinvestments in India during the year			

Note: Data pertaining to each type of investment are to be reported consolidating the information country wise. If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

Block 3B: Financial Derivatives (with non-resident entities only)

Please furnish here the outstanding foreign liabilities on account of financial derivatives contract **entered into with non-residents.**

Financial Derivatives	Country of non-resident investor	Amount in ₹ lakh as at the end of	
		March Previous FY	March Current FY
(i) Notional Value			
(ii) Mark to market value			

Note: If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

Block 3C: Other Investments:

This is a residual category that includes all financial outstanding not considered as direct investment or portfolio investment (**outstanding liabilities with Unrelated Parties**)

Other Investment	Country of non-resident lender	Amount in ₹ lakh as at the end of	
		March Previous FY	March Current FY
4.0 Trade Credit (4.0 = 4.1+4.2)			
4.1 Short Term (4.1= 4.1.1+4.1.2)			
4.1.1. Up to 6 Months			
4.1.2. 6 Months to 1 Year			
4.2. Long Term			
5.0 Loans (5.0 = 5.1+5.2)			
5.1 Short Term			
5.2 Long Term			
6.0 Other Liabilities (6.0 = 6.1+6.2)			
6.1 Short Term (Up to 1 yr.)			
6.2 Long Term			

Note: (i) Data pertaining to each type of investment are to be reported consolidating the information country wise. If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

(ii) At item 5.0, loan should include the ECB loan other than those taken from non-resident parent company. ECB loan taken from parent company abroad should be shown under Other Capital of Block 2A.

Section –III

FOREIGN ASSETS

1. Please use the **exchange rate as at end-March/end-December** (as applicable) of reporting year while reporting the **foreign assets in ₹ lakh.**

2. In case, the overseas company is listed, equity should be valued using share price on closing date of reference period, while in case of unlisted company, use Own Fund of Book Value (OFBV) method for valuation of equity (*see the attached guidelines for details*)

Block 4: Direct Investment Abroad under Overseas Direct Investment Scheme

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

[Please furnish here your outstanding investments in Non-resident enterprises [Direct Investment Enterprises (DIE)], **made under the Overseas Direct Investment Scheme**, in each of which **your company hold 10 per cent or more** Equity shares on the reporting date]. *If this block is Non-NIL, then please furnish the information in BLOCK 6.*

Name of the non-resident Direct Investment Enterprise (DIE)	Type of Capital	Country of non-resident DIE	Equity holding (%)	Amount in ₹ lakh as at the end of		
				March Previous FY	December Current FY	March Current FY
	1.0 Equity Capital (1.0 = 1.1-1.2)					
	1.1 Claims on Direct Investment Enterprise					
	1.2 Liabilities to Direct Investment Enterprise					
	2.0 Other Capital(2.0 = 2.1-2.2)					
	2.1 Claims on Direct Investment Enterprise					
	2.2 Liabilities to Direct Investment Enterprise					
	3.0 Disinvestments made abroad during the year					

Note: Please use separate sheets in the above format to report for separate DIEs

Block 4B: Foreign Direct Investment Abroad (Less than 10 % Equity holding)

[Please furnish here your outstanding investments in non-resident enterprises (Direct Investment Enterprises DIE), **made under the Overseas Direct Investment Scheme**, in each of which **your company holds less than 10 per cent** Equity shares on the reporting date].

Name of the non-resident enterprises	Type of Capital	Country of non-resident enterprises	Amount in ₹ lakh as at the end of		
			March Previous FY	December Current FY	March Current FY
	1.0 Equity Capital (1.0 = 1.1-1.2)				
	1.1 Claims on non-resident Enterprise abroad				
	1.2 Liabilities to non-resident Enterprise abroad				
	2.0 Other Capital (2.0 = 2.1-2.2)				
	2.1 Claims on non-resident Enterprise abroad				
	2.2 Liabilities to non-resident Enterprise abroad				
	3.0 Disinvestments made abroad during the year				

Note: Please use separate sheets in the above format to report different non-resident fellow enterprises.

Portfolio and Other Assets Abroad (*i.e.*, position with unrelated parties)

Block 5A: Portfolio Investment Abroad

1. Please furnish here the outstanding investments in non-resident enterprises, **other than those made under Overseas Direct Investment Scheme** in India (*i.e.*, other than those reported in Block 4A & 4B).
2. In case overseas companies are listed, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, use Own Fund of Book Value Method (OFBV) (*see the attached guidelines for details*)

Portfolio Investment	Country of non-resident enterprise	Amount in ₹ lakh as at the end of		
		March Previous FY	December Current FY	March Current FY
1.0 Equity Securities				
2.0 Debt Securities (2.0=2.1+2.2)				
2.1 Bonds and Notes (original maturity more than 1 year)				
2.2 Money Market Instruments (original maturity up to 1 year)				
3.0 Disinvestments Abroad during the year				

Note: Data pertaining to each type of investment are to be reported consolidating the information country wise. If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 5B: Financial Derivatives (with non-resident entities only)

Please furnish here the outstanding claims on non-residents on account of financial derivatives contract entered into with Non-residents.

Financial Derivatives	Country of non-resident enterprise	Amount in ₹ lakh as at the end of	
		March Previous FY	March Current FY
(i) Notional Value			
(ii) Mark to market value			

Note: If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 5C: Other Investment (Outstanding claims on Unrelated Parties):

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

Other Investment	Country of non-resident enterprise	Amount in ₹ lakh as at the end of	
		March Previous FY	March Current FY
4.0 Trade Credit (4.0=4.1+4.2)			
4.1 Short Term (4.1=4.1.1+4.1.2)			
4.1.1. Up to 6 Months			
4.1.2. 6 Months to 1 Year			
4.2 Long Term			

5.0 Loans (5.0=5.1+5.2)			
5.1 Short Term (Up to 1 year)			
5.2 Long Term			
6.0 Other Assets (6.0=6.1+6.2)			
6.1 Currency & Deposits			
6.2 Others			

Note: (i) Data pertaining to each type of investment are to be reported consolidating the information country wise. If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 6: Equity Capital, Free Reserves & Surplus of Direct Investment Enterprise Abroad

[Please report here the total equity, the equity held by your company and the total free reserves & surplus of those non-resident enterprises in each of which your company held 10 per cent or more shares on the reporting date].

If this block is **Non-NIL** then please make sure that you have provided the relevant information in BLOCK 4A.

Name of the DIE	Item	Currency	Amount in Foreign Currency as at the end of (in actual)	
			March Previous FY	March Current FY
(1)	(2)	(3)	(4)	(5)
	1. Total Equity of DIE			
	2. Equity of DIE held by you			
	3. Free Reserves & Surplus of DIE			
	4. Dividend Received by you during the year			
	5. Amount of your Profit retained by DIE during the year			

Note: If your company is a Direct Investor in more than one DIE, the data should be provided in the same format in respect of each such DIE using additional sheets.

Block 7: Contingent Foreign Liabilities

[Please report here the relevant details about the contingent foreign liabilities of your company]

Description of Contingent Liability	Country	Currency [#]	Amount in Foreign Currency as at the end of (in actual)	
			March Previous FY	March Current FY
(1)	(2)	(3)	(4)	(5)

Note: # Currency of denomination of the contingent foreign liability should be mentioned in Col. 3. Refer to the details on Contingent liabilities given in Annex.

Block 8: Employee Information of reporting Indian company

	As at the end-March of	
	Previous FY	Current FY
No. of Employees on Payroll		

BLOCK 9: Name(s) & Address (es) of your subsidiary in India

Sr. Nos.	Name of Subsidiary in India*	Your Equity holding in subsidiary %	Address	Retained profit/ loss of your subsidiary in India during the current FY (Amount in ₹ lakh)

Certificate

We hereby certify that all the facts and figures furnished in this schedule reflect the accurate position of the company and reported after understanding all the items of all the blocks of the schedule.

Place :

Signature and Name of the Authorised person

Date :

Concepts & Definitions to be used while filling-in the Annual Return on Foreign Liabilities and Assets

Residence of Enterprises

An enterprise is said to have a center of economic interest and to be a resident unit of a country (economic territory) when the enterprise is engaged in a significant amount of production of goods and/or services there or when it owns land or buildings located there. The enterprise must maintain at least one production establishment in the country and must plan to operate the establishment indefinitely or over a long period of time.

Free Reserves and Surplus (Block 1B, Item 3.1)

Free Reserves and Surplus should **include** all unencumbered reserves such as

- i) General Reserve net of losses, if any
- ii) Capital Reserve
- iii) Development Rebate Reserve
- iv) Premium on shares
- v) Dividend Equalization Reserve
- vi) Investment Allowance (**utilized**) Reserve.

Free Reserves and Surplus should **exclude** Tax provisions and other items such as

- i) provision for deferred taxation
- ii) Tax Equalization Reserve
- iii) Investment Allowance (**unutilized**) and
- iv) Revaluation Reserve

Retained Profit (Block 1B, Item 3.4)

Retained profit = Profit after tax – Dividend declared (excluding tax on dividend)
(i.e. Item 3.4 = Item 3.2 minus Item 3.3, of Block 1B)

A. Direct Investment:

Direct investment is a category of international investment in which a resident entity in one economy (direct investor (DI) acquires a lasting interest in an enterprise resident in another economy (Direct Investment Enterprise (DIE). It consists of two components, viz., Equity capital and Other Capital.

(i) Equity Capital under Direct Investment

It covers (1) Equity in branches and all shares (except non-participating preferred shares) in subsidiaries and associates; (2) Contributions such as the provision of machinery, land & building(s) by a direct investor to a DIE by equity participation; (3) Acquisition by a DIE of shares in its direct investor, termed as Reserve investment (i.e. claims on DI).

(a) Foreign Direct Investment in India (Block 2A, 2B)

If the Indian company has issued the shares to non-resident entities under the FDI scheme in India, then it should be reported under the Foreign Direct Investment in India (Liabilities), Section II of the return. If the non-resident entity **holds the 10 per cent or more** equity/ ordinary shares in the reporting Indian company, then it should be reported under **Block 2A** (item 1.2, liabilities to direct investment). However, if the non-resident entity holds **less than 10 per cent**

of the equity capital of reporting Indian company, then it should be reported under **Block 2B** (item 1.2, liabilities to direct investment). In both the cases, the investing non-resident entity is called as the Direct Investor (DI) while the reporting Indian company is called as Direct Investment Enterprise (DIE).

If the **reporting Indian company** also holds the **equity shares in its DI** company abroad and if its share is **less than 10 per cent** of equity capital of DI company, then it is called as **reverse investment** and same should be **reported under item 1.1** (claim on direct investor) of the respective block i.e. **Block 2A or 2B**.

(b) Foreign Direct Investment abroad by Indian companies (Block 4A and 4B)

If the reporting Indian company invest in equity shares of non-resident company, under the Overseas Direct Investment scheme in India, i.e. investment in Joint venture or Wholly owned subsidiaries abroad, then it should be reported under the Foreign Direct Investment abroad, Section III. If the equity holding of Indian company in non-resident company is **10 per cent or more**, then it should be reported under **Block 4A** (item 1.1 claim on DIE), **otherwise**, it should be reported under **Block 4B** (item 1.1, claim on DIE). In both the cases, Indian company is called as the Direct Investor (DI) while the non-resident company is called as Direct Investment Enterprise (DIE).

If the **non-resident DIE** also holds the **equity shares in Indian reporting company** (DI) and if its share is **less than 10 per cent** of equity capital of reporting company, then it is called as **reverse investment** and same should be reported **under item 1.2** (liabilities to DIE) of the respective block i.e. **Block 4A or 4B**.

(ii) Other Capital under Direct Investment (Block 2A, 2B, 4A and 4B)

The **other capital** (inter-company debt transactions) component of direct investment covers the outstanding liabilities or claims arising due **borrowing and lending of funds, investment in debt securities including non-participating preference shares, trade credits, financial leasing, share application money, between direct investors and DIEs and between two DIEs that share the same Direct Investor**. Non-participating preferred shares owned by the direct investor are treated as debt securities & should be included in Other Capital.

B. Portfolio Investment:

(i) Portfolio Investment (Block 3A & 5A)

It covers **external claims by or liabilities to reporting Indian company** in equity and debt securities **other than those included in direct investment** (Block 2A, 2B and 4A, 4B). Debt securities include long-term bonds and notes, short-term money market instruments.

Any investment is made **by the non-resident entities in Indian company** under the **Portfolio Scheme in India** should be reported under **Block 3A** (Portfolio liabilities).

Any investment made **by the Indian company** in foreign shares and / or debt securities, **apart from the investment made under the Overseas Direct Investment Scheme**, should be reported under **Block 5A** (Portfolio assets).

(ii) Equity Securities (Block 3A & 5A, Item 1.0)

Equity securities are instruments acknowledging the holders' claim to the residual income of the issuing enterprise after the claims of all creditors have been met. These include ordinary shares, stocks, participating preference shares, depository receipts (ADRs/GDRs) denoting ownership of

equity securities issued to non-residents, shares/units in mutual funds & investment trusts, equity securities that are sold under repurchase agreement, equity securities that are sold under securities lending arrangement.

(iii) Debt Securities (Block 3A & 5A, Item 2.0)

These include bonds and notes, money market instruments.

(iv) Bonds and Notes (Block 3A & 5A, Item 2.1)

This category includes debt securities with original contractual maturities of more than one year (long-term). It includes the long-term securities such as Debentures, Non-participating preference shares, Convertible bonds, Negotiable certificates of deposit, Perpetual bonds, Collateralized mortgage obligations, Dual currency, Zero coupon and other Deep discounted bonds, Floating rate bonds and Index-linked bonds.

(v) Money Market Instruments (Block 3A & 5A, Item 2.2)

These short-term instruments include treasury bills, commercial paper, banker's acceptances, short-term negotiable certificates of deposit and short-term notes issued under note issuance facilities. It may be noted that the instruments that share the characteristics of money market instruments but are issued with maturities of more than one year are classified as Bonds and Notes.

C. Financial Derivatives (Block 3B and 5B)

Financial derivatives are linked to a specific financial instrument, indicator, or commodity and through which specific financial risks can be traded in the financial markets in their own right. Derivative instruments include futures, interest and cross-currency swaps, forward rate agreements, forward foreign exchange contracts, credit derivatives and various types of options.

D. Other Investments: (Block 3C and 5C)

This is a residual category that **includes** all financial outstanding **not considered as direct investment or portfolio investment** such as:

(i) Trade Credits (Block 3C & 5C, Item 4.0)

Trade credits are assets and liabilities that arise from the **direct extension of credit** from a **supplier to a buyer** for transactions in **goods and services** and **advance payments** by buyers for transactions in goods and services and for work in progress. **Trade credit assets** are **advance payments** made by **importer (you)** for (your) imports or **credit extended by exporter (you)** directly to (your) importer. **Trade credit liabilities** are **advance payment received** by the exporter (you) for (your) exports or **credit received by importer (you)** directly from (your) exporter. It may be noted here that **funding provided by an enterprise other than the supplier** for the purpose of purchasing goods or services is treated **as a loan** and not as trade credit.

(ii) Loans (Block 3C & 5C, Item 5.0)

Loans are direct lending of funds by a creditor to a debtor through arrangements. These include, loans to finance trade (i.e. Buyers' credit in which a bank or a financial institution or an export credit agency in the exporting country extends a loan directly to a foreign buyer or to a bank in the importing country to pay for the purchase of goods and services), mortgages, and other loans and advances. Financial leases and repurchase agreements are also considered loans.

Note that **loan received from the non-resident direct investor** should be reported under **Other Capital of Block 2A or 2B** while **loan extended** to your **subsidiaries/ associates abroad** should be reported under **Other Capital of block 4A or 4B**. These outstanding loans should be reported under the loan item of Block 3C or 5C.

(iii) Other Liabilities and Assets (Block 3C & 5C, Item 6.0)

These are the residual items that include all external financial liabilities and assets not recorded elsewhere in the liabilities/assets. These are miscellaneous accounts receivable and payable such as accounts relating to interest payments in arrears, loan payments in arrears, wages and salaries outstanding, prepayments of insurance premiums, taxes outstanding & the like.

(iv) Long-term and Short-term Investment (Block 3C & 5C)

Long-term investment is defined as investment with an original contractual maturity of more than one year. Short-term investment includes currency, investment payable on demand or with an original contractual maturity of one year or less.

E. Disinvestments in India and Abroad (Item 3.0 in Block 2A, 2B, 3A, 4A, 4B & 5A)

Any disinvestments made by non-resident direct investor of the reporting Indian company during the year should be reported in Block 2A and Block 2B and portfolio disinvestments in Block 3A. Likewise, any disinvestment made by the reporting Indian company in its DIE abroad during the year should be reported in Block 4A and 4B and portfolio disinvestments by reporting company should be reported in Block 5A.

F. Contingent Liabilities (Block 7)

Contingent liabilities are obligations that **arise from a particular discrete event(s), which may or may not occur**. Contingent liabilities are (i) **explicit - arise from a legal or contractual arrangement** (Loan & other payment guarantees, credit guarantees, Contingent credit availability guarantees, exchange rate guarantees, etc) and (ii) **implicit - do not arise from a legal or contractual source, but recognized after a condition or event is realized**.

If the Indian company has extended a guarantee to a loan taken by non-resident entity (may be its subsidiary abroad), such guarantees are part of contingent foreign liabilities. In this case, under column 1 of block 7, "Loan Guarantee" needs to be mentioned.

Country should relate to the country of location of the non-resident creditor involved in the transaction. To illustrate, as mentioned above, if the contingent foreign liability is in connection with guarantees on loans, the country of location of the non-resident creditor to whom such guarantees are given, needs to be reported in column 2.

Seal/

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

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

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

2. Pricing Guidelines

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

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

2.2 Transfer by Resident to Non-resident (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII)

Price of shares transferred by way of sale by resident to a non-resident where the shares of an Indian company are:

- (a) listed on a recognized stock exchange in India ,shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines , as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares,
- (b) not listed on a recognized stock exchange in India ,shall not be less than the fair value to be determined by a SEBI registered Category I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method.

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

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

Sale of shares by a non-resident to resident shall be in accordance with Regulation 10 B (2) of Notification No. FEMA 20/2000-RB dated May 3, 2000 which shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given at para 2.2 above.

3. Responsibilities / Obligations of the parties

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

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

4.1 The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a Foreign Institutional Investor (FII), payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO accounts.

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

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

5. Documentation

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

5.1 For sale of shares by a person resident in India

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee

- company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
 - iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.
 - iv. Certificate indicating fair value of shares from a Chartered Accountant.
 - v. Copy of Broker's note if sale is made on Stock Exchange
 - vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/ convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
 - vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

5.2. For sale of shares by a person resident outside India

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

6. Reporting requirements

6.1 Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC-TRS. The Form FC-TRS should be submitted to the AD Category – I bank, within 60 days from

the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. The AD Category – I bank, would forward the same to its link office. The link office would consolidate the Forms and submit a monthly report to the Reserve Bank⁷.

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

6.2 When the transfer is on private arrangement basis, on settlement of the transactions, the transferee/his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the Form FC-TRS from the AD branch that the remittances have been received by the transferor/payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.

6.3 The actual inflows and outflows on account of such transfer of shares shall be reported by the AD branch in the R-returns in the normal course.

6.4 In addition the AD branch should submit two copies of the Form FC-TRS received from their constituents/customers together with the statement of inflows/outflows on account of remittances received/made in connection with transfer of shares, by way of sale, to IBD/FED/or the nodal office designated for the purpose by the bank in the enclosed proforma (which is to be prepared in MS-Excel format). The IBD/FED or the nodal office of the bank will in turn submit a consolidated monthly statement in respect of all the transactions reported by their branches together with copies of the FC-TRS Forms received from their branches to Foreign Exchange Department, Reserve Bank, Foreign Investment Division, Central Office, Mumbai in soft copy (in MS- Excel) by e-mail to fdidata@rbi.org.in

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

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

6.7 On receipt of statements from the AD, the Reserve Bank may call for such additional details or give such directions as required from the transferor/transferee or their agents, if need be.

□□□□□□□□□□□□□□□□□□□□

⁷ To the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

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

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India or DCF method for listed companies and unlisted companies, respectively.
- vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/ convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.
- viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year.**

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

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

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

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

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

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

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

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

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

Date :

Place:

Stamp :

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

	Address (including e-mail , telephone Number, Fax no)	
	Activity	
	NIC Code No.	
2	Whether FDI is allowed under Automatic route	
	Sectoral Cap under FDI Policy	
3	Nature of transaction <i>(Strike out whichever is not applicable)</i>	Transfer from resident to non resident / Transfer from non resident to resident
4	Name of the buyer	
	Constitution / Nature of the investing Entity Specify whether <ol style="list-style-type: none"> 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF^π) 9. Partnership / Proprietorship firm 10. Financial Institution 11. NRIs / PIOs 12. others 	
	Date and Place of Incorporation	

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

	Address of the buyer (<i>including e-mail, telephone number. Fax no.</i>)			
5	Name of the seller			
	Constitution / Nature of the disinvesting entity Specify whether <ol style="list-style-type: none"> 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[¶]) 9. Partnership/ Proprietorship firm 10. Financial Institution 11. NRIs/PIOs 12. others 			
	Date and Place of Incorporation			
	Address of the seller (<i>including e-mail, telephone Number Fax no</i>)			
6	Particulars of earlier Reserve Bank / FIPB approvals			
7	Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures to be transferred			
	<i>Date of the transaction</i>	<i>Number of shares CMCPS / debentures</i>	<i>Face value in Rs.</i>	<i>Negotiated Price for the transfer**in Rs.</i>
				<i>Amount of consideration in Rs.</i>

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

8	Foreign Investments in the company		<i>No. of shares</i>	<i>Percentage</i>	
		Before the transfer			
		After the transfer			
9	Where the shares / CMCPs / debentures are listed on Stock Exchange				
	<i>Name of the Stock exchange</i>				
	<i>Price Quoted on the Stock exchange</i>				
	Where the shares / CMCPs / debentures are Unlisted				
	<i>Price as per Valuation guidelines*</i>				
	<i>Price as per Chartered Accountants * / ** Valuation report (CA Certificate to be attached)</i>				
Declaration by the transferor / transferee					
I / We hereby declare that :					
i. The particulars given above are true and correct to the best of my/our knowledge and belief.					
ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.					
iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures of a company engaged in financial services sector or a sector where general permission is not available.					
iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.					

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

Date:

Note:

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

Certificate by the AD Branch

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

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

Signature

Name and Designation of the Officer

Date: Name of the AD Branch

AD Branch Code

Form DR

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

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

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

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

	<u>Before Issue</u>	<u>After Issue</u>
(a) Authorised Capital		
(b) Issued and Paid-up Capital		
(i) Held by persons Resident in India		
(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of		

foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)

(iii) Held by NRIs/PIOs/OCBs

(iv) Held by FIIs

Total Equity held by non-residents

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

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

14. Number of GDRs/ADRs issued

15. Ratio of GDRs/ADRs to underlying shares

16. Issue Related Expenses

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

(i) Amount (in US\$)

(ii) Amount as percentage to the total issue

(b) Other expenses

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

18. Details of the listing arrangement

Name of Stock Exchange

Date of commencement of trading

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

20. Amount raised (in US \$)

21. Amount repatriated (in US \$)

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

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory of the Company

Form DR - Quarterly

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

Quarterly Return

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

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

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

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory of the Company