



Foreign Direct Investment- A Practitioner's Guide



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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PREFACE

In the wake of India's emergence as one of the fastest growing economies at the global fora, India has also improved its ranking by one notch to 9th position as one of the highest recipients of Foreign Direct Investment (FDI) as per World Investment Report, 2017 issued by UN Trade and Development Agency. Under the initiative of "Invest India", the foreign promotion arm of the government, it is estimated for India to receive the foreign direct investment commitment worth \$83.5 billion; 90% of which came in the past 15 months. This confirms the strong confidence of the foreign investors for investing in India's long term prospects.

Keeping pace with Foreign Direct Investment which is a critical driver of economic growth, the government is dedicated to ensuring a favourable policy regime along with the robust business environment. As per the reports of Department of Industrial Policy and Promotion (DIPP), the total FDI investments of around US\$ 14.55 billion, received during April-June 2017 is directly proportionate to the government's effort for improving ease of doing business and relaxation in FDI norms toward yielding positive outcome.

In the era of the positive numbers accelerating the growth of FDI under various government initiatives, schemes, policies and balancing reformed regulation for the FDI market, it is apt for the professionals and related stakeholders to receive positive information for further strengthening the future of FDI in the country and optimistically assisting in the remarkable growth of Indian economy under New India, 2022.

With a view to educate professionals and corporate executives to facilitate FDI and opening of Industries and offices in India by foreign companies, banks and insurance companies, the Institute has brought out this publication primarily focusing on Foreign Exchange Management Act, Foreign Direct Investment (FDI) in India, Establishment of Branch Office (BO)/Liaison Office (LO)/Project Office (PO) in India, Liberalized Remittance Scheme (LRS), Remittance of Assets outside India, Compounding of Contraventions under FEMA.

I am thankful to Advocate Sambhrant Krishna for thoroughly updating the manuscript and other valuable inputs to the book. I also commend the dedicated efforts put in by Mr. Chittaranjan Pal, Assistant Director and Ms. Pankila Bhardwaj, consultant in the Institute for preparing and meticulously going through the manuscript, incorporating various updates and finalising the final text under the able guidance and overall supervision of CS Sonia Bajjal, Director of the Institute.

As a book on one of the most contemporary topics in India, it is suitable for advancing the understanding and indulgence of readers on various facts and facets of FDI as well as the contemporary regime of initiatives promoting FDI in the country.

I wish a happy learning experience to all its readers.

Place : New Delhi
Date : November 02, 2017

CS (Dr.) Shyam Agrawal
President

The Institute of Company Secretaries of India

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INTRODUCTION

"Sone ki chidiya", a privileged breathe, an amicable, opulent, incredible long lasting prosperous economy, not then but today and in the future. India's over 1.3 billion strong population, 29 states and 7 union territories, 22 languages and over 1652 dialects, abundant natural resources, fertile lands, cultural diversity, a mounting corporate elite, a robust enduring creative economy and strong influence of intelligentsia from the history viz. great mathematicians, scientists, economists symbolically depict the Golden bird. A tolerating, ever rising, enthusiastic young economy with a flourished past, liberalized and adaptable thoughts and processes inspires for a thriving days ahead. What matters most is how India's Foreign Direct Investment (FDI) is an endorsement of its status as a preferred investment destination amongst global investors.



*India Ranks amongst the
Top 10 FDI Destinations
Globally. As per World
Investment Report 2017,
the favorite FDI
Destinations remain the
United States,
China & India*

World's largest democracy - India is a Sovereign Socialist Secular Democratic Republic with a Parliamentary form of government, which is federal in structure with unitary features. India's robust legal and political systems ensure long-term political stability. The Indian political system is supported by Executive, Legislative and Judicial branches. Every major branch is independent of one another.

India is one of the fastest growing economies in the world and has emerged as a key destination for foreign investors in recent years. Economic reforms initiated in 1991 have grown in scope and scale and yielded increasingly salutary dividends. One of them is the steady improvement in India's relative position in the global economy, reflected in New Delhi's growing influence in international institutions (G-8, G-20) and negotiating free trade areas (with ASEAN, EU). Another is the improved efficiency in the economy and adoption of international "best practices" in the production of a range of goods and services.

India is likely to grow at consistently higher rates (>7%) and retain its position as one of the fastest growing economies till 2020¹.

1. International Monetary Fund.

Doing Business 2018

As per Doing Business 2018: Reforming to Create Jobs, a World Bank Group Flagship Publication, India jumped 30 places and entered the top 100 club in World Bank's ease of doing business ranking for 2018. South Asia is the only region not represented in the top 50 ranking for ease of doing business. However, India stands out this year as one of the 10 economies that improved the most in the areas measured by Doing Business.²

Doing Business 2018 measures regulations affecting 11 areas of the life of a business. Ten of these areas are included in this year's ranking on the ease of doing business:

- Starting a Business
- Dealing with Construction Permits
- Getting Electricity
- Registering Property
- Getting Credit
- Protecting Minority Investors
- Paying Taxes
- Trading Across Borders
- Enforcing Contracts and
- Resolving Insolvency.

Doing Business also measures labor market regulation, which is not included in 2018 ranking.

Doing Business Report 2018 - Major achievements for India

- *Starting a Business*

Starting a business in India has been made faster by merging applications for Permanent Account Number (PAN) and Tax Account Number (TAN) and by improving the online application system. This reform applies to both Delhi and Mumbai. Mumbai also made starting a business faster by merging the applications for value added tax and the Profession Tax (PT).

- *Dealing with Construction Permits*

India has reduced the number of procedures and time required to obtain a building permit by implementing an online system that has streamlined the process at the Municipality of New Delhi and Municipality of Greater Mumbai.

- *Getting Credit*

India has strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and by adopting a new

2. Doing Business 2018 : Reforming to Create Job, A World Bank Group Flagship Report.

law on insolvency that provides a time limit and clear grounds for relief to the automatic stay for secured creditors during reorganization proceedings. This reform applies to both Delhi and Mumbai.

- *Protecting Minority Investors*

India has strengthened the protection of minority investors by increasing the remedies available in cases of prejudicial transactions between interested parties. This reform applies to both Delhi and Mumbai.

- *Paying Taxes*

Paying taxes in India has been made easier by requiring the payments to be made electronically to the Employees Provident Fund and introducing a set of administrative measures easing compliance with corporate income tax. This reform applies to both Delhi and Mumbai.

- *Trading Across Borders*

Import border compliance time in Mumbai has been reduced by improving infrastructure at the Nhava Sheva Port. Export and import border compliance costs has also been reduced in both Delhi and Mumbai by eliminating merchant overtime fees and through the increased use of electronic and mobile platforms.

- *Enforcing Contracts*

Enforcing contracts in India has made easier by introducing the National Judicial Data Grid, which makes it possible to generate case management reports on local courts. This reform applies to both Delhi and Mumbai.

- *Resolving Insolvency*

Resolving insolvency has also been made easier by adopting a new Insolvency and bankruptcy code that introduced a reorganization procedure for corporate debtors and facilitated continuation of the debtor's business during insolvency proceedings. This reform applies to both Delhi and Mumbai.

- *Labor market regulation*

India increased the mandatory length of paid maternity leave. This reform applies to both Delhi and Mumbai

The important highlights of India's performance as per the World Bank in the Doing Business Report 2018 are:

1. *Resolving Insolvency*

- a. Rank improved from 136 to 103
- b. Distance to Frontier (DTF) score improved from 32.75 to 40.75
- c. Strength of insolvency framework index increased from 6 to 8.5
- d. Insolvency & Bankruptcy Code created for efficient handling of restructuring & insolvency proceedings
- e. Professional institutes set up for handling restructuring & insolvency proceedings

2. *Paying Taxes*

- a. Rank improved from 172 to 119
- b. DTF score improved from 46.58 to 66.06
- c. Payments reduced from 25 to 13 in a year
- d. Time reduced from 241 to 214 hours
- e. Total tax rate reduced from 60.6% to 55.3% (% of profit)
- f. Post filing index improved from 4.3 to 49.31
- g. Enabled electronic registration, return & payment of ESI & EPF contributions

3. *Getting Credit*

- a. Rank improved from 44 to 29
- b. DTF score improved from 65 to 75
- c. Strength of legal rights index improved from 6 to 8
- d. Credit bureau coverage increased from 21.4% to 43.5% (% of adults)
- e. Increased coverage of security interest registration under SARFAESI Act
- f. Secured creditors prioritized over Government dues for purposes of recovery

4. *Enforcing Contracts*

- a. Rank improved from 172 to 164
- b. DTF score improved from 35.19 to 40.76
- c. Cost reduced from 39.6% to 31% (% of claim)
- d. Quality of judicial process index improved from 9 to 10.3
- e. Dedicated commercial courts established
- f. National Judicial Data Grid (NJDG) to monitor and manage court cases

5. *Protecting Minority Investors*

- a. Rank improved from 13 to 4
- b. DTF score improved from 73.33 to 80
- c. Strength of minority investor protection index increased from 7.3 to 8
- d. Extent of conflict of interest regulation index increased from 6.7 to 7.3
- e. Extent of shareholder governance index increased from 8 to 8.7
- f. Greater transparency requirements for interested parties transactions
- g. Greater shareholder protection through action against directors & claims for damages

6. Construction Permits

- a. Rank improved from 185 to 181
- b. DTF score improved from 32.83 to 38.80
- c. Procedures to obtain construction permits reduced from 35.1 to 30.1
- d. Time reduced from 190.0 to 143.9 days
- e. Cost reduced from 25.9 per cent to 23.2 per cent of warehouse value

Year	2015	2016	2017	2018
India's EODB Ranking	134	131	130	100

A favorable demography for higher growth

India not only supports one of the largest populations in the world, but also one of the youngest. Fifty per cent of its population is below the age of 25 and two-thirds below the age of 35. Also, about 65 per cent of Indians are in the working age group, giving the country a significant edge in terms of cost competitiveness and low labour costs. Moreover, India's labour force has a strong knowledge base with a significant English-speaking population, making it a top destination for multinational corporations that are looking to expand their overseas operations for market and talent.

"Two hundred and fifty million people are set to join India's workforce by 2030. As a big chunk of the population shifts into the working age group, the offshoot of that is an increase in disposable income and conspicuous consumption. This is the most exciting aspect of India's demographic dividend."³

The Indian consumer market will grow 2.5 times by 2025⁴

Consumer spending in India grew from US\$ 549 billion to US\$ 1.06 trillion between 2006 and 2011, putting India on the path to becoming one of the world's largest consumer markets by 2025. India's consumption is expected to rise 7.3 per cent annually over the next 20 years. By 2040, nine out of every ten Indians will belong to 'the global middle class group' with daily expenditures ranging between US\$ 10 and US\$ 100 per person in today's purchasing power parity terms.

Seventy per cent of this expenditure will be on discretionary items like entertainment, healthcare, communication, education, personal products, services and so on. The absolute number of India's middle class will touch 1 billion by 2039.

'Foreign Direct Investment (FDI) Inflows - A Success Story'

The early nineties was a period when the Indian economy faced a severe Balance of Payment crisis. Exports began to experience serious difficulties. The crippling external debts were putting pressure on economy. In view of all these developments there was

3. Sunil Devmurari, Country Manager, Euromonitor : October 2012.

4. investindia.gov.in.

a serious threat of economy defaulting in respect of external payments liability. It was under such adverse situation that the policy makers decided to adopt a more liberal and global approach opening or liberalising its door to FDI inflows in order to restore the confidence of foreign investors. FDI provides a situation wherein both the host and the home nations derive some benefit. The home countries want to take the advantage of the vast markets opened by industrial growth. Whereas the host countries get to acquire resources ranging from financial, capital, entrepreneurship, technological know-how and managerial skills which assist it in supplementing its domestic savings and foreign exchange.

The evolution of FDI in India – Three Phases

The First Phase (Between 1969-1991)
<ul style="list-style-type: none"> • Monopolies and Restrictive Trade Practices Commission (MRTP) in 1969, imposed restrictions on the size of operations, pricing of products and services of foreign companies. • The Foreign Exchange Regulation Act (FERA), enacted in 1973, limited the extent of foreign equity to 40%, though this limit could be raised to 74% for technology-intensive, export-intensive, and core-sector industries. • A selective licensing regime was instituted for technology transfer and royalty payments and applicants were subjected to export obligations.
The Second Phase (Between 1991 and 2000)
<ul style="list-style-type: none"> • Liberalisation of the FDI policy, as part of the Government's economic reforms program • In 1991 as per the 'Statement on Industrial Policy', FDI was allowed on the automatic route, up to 51%, in 35 high priority industries. • A Foreign Investment Promotion Board (FIPB) was constituted to consider cases under the government approval route.
The Third Phase (Between 2000 till date)
<ul style="list-style-type: none"> • Except for prohibited sectors, rest of the activities is being kept under automatic route. • Caps were gradually raised in a number of sectors/activities. • Proposal for foreign investment under Government Route are considered by respective Administrative Ministry/Department.

The Government in last three years has undertaken a number of reforms in different areas of economy. In this regard FDI policy reforms carried out by Government are

nothing less than historic. The scale of reforms can be gauged from the fact that during this period, 21 sectors covering 87 areas of FDI policy have undergone reforms. This has resulted in increased FDI inflows which year after year is setting up new records. If the FDI inflows of US Dollar 55.6 billion for the year ending March, 2016 were an all-time high, the country registered FDI inflow of US Dollar 60.08 billion in the next financial year (2016-17), thereby scaling an even higher peak.

Increased FDI inflows in the country are largely attributed to intense and bold policy reforms the Government undertook to bring pragmatism in the FDI regime. The country has now become the topmost attractive destination for foreign investment. A new direction was given to FDI policy reforms in 2014 itself when conservative sectors like Rail Infrastructure and Defence were liberalized. This was accompanied by reforms in other sectors such as Medical Devices and Construction Development. The momentum of positive business climate was further ignited with launch of Make in India initiative in September 2014. The country in the year ending March 2015 received FDI of US Dollar 45.15 billion as against US Dollar 36.05 billion in the preceding fiscal.

Reform measures gained further momentum the following year. FDI policy on a number of sectors was liberalized. With a view to provide ease of doing business, licensed and non-sensitive activities were placed under automatic route and investment caps were raised. FDI policy provisions were radically overhauled across sectors such as Construction Development, Broadcasting, Retail Trading, Air Transport, Insurance and Pension among others. In addition, initiatives such as introduction of composite caps in the FDI policy and raising the FIPB approval limit were also undertaken to promote ease of doing business in the country. These initiatives resulted in the country receiving the then highest ever FDI inflow of US Dollar 55.6 billion.

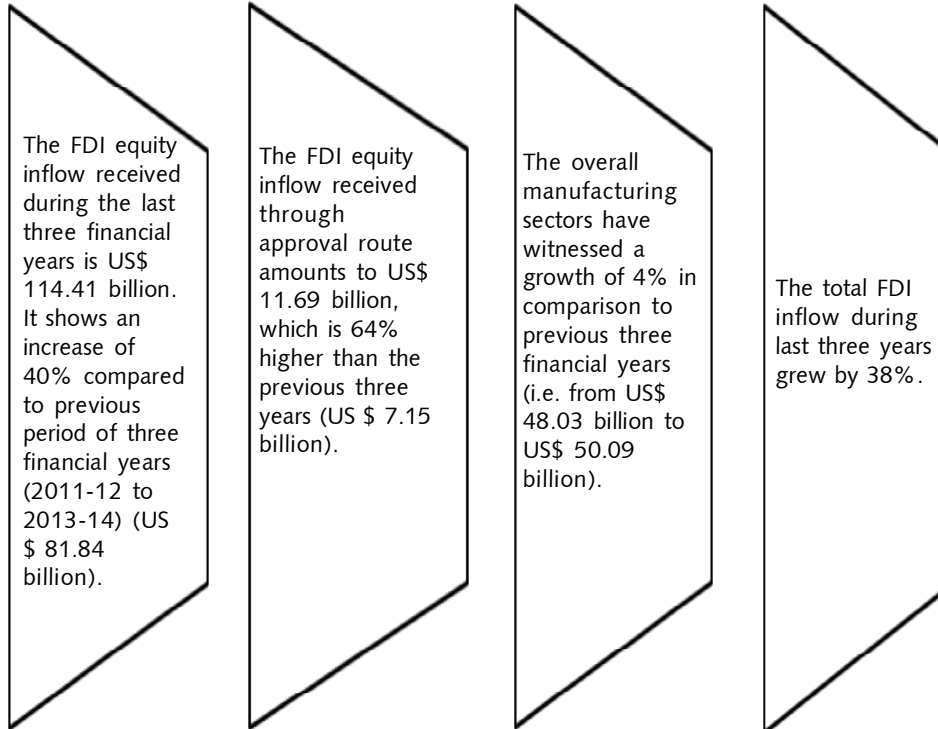
The measures towards FDI policy liberalization and reforms continued in the last financial year. A paradigm shift was made in the FDI policy on retail and other financial services sector. For retail trading of food products, the Government permitted 100% FDI with unqualified condition that such food products have to be manufactured and/or produced in India. The measure promotes domestic industry, restricts imports, creates local jobs and results in conserving valuable foreign exchange. In the Financial services sector, Government promulgated that any financial sector activity which is regulated by any financial sector regulator will be eligible for 100% FDI under automatic route, and approval would be needed only for unregulated financial sector activities. During the last financial year, FDI policy reforms were also undertaken in other sectors such as Defence, Airport Infrastructure, Broadcasting, Animal Husbandry and Retail Trading. The path breaking reform measures undertaken during the last financial year have resulted in India surpassing the FDI received in 2015-16 and registering an inflow of US Dollar 60.08 billion during 2016-17, a new all time high.

It has been the endeavor of the Government to put in place an enabling and investor friendly FDI policy. The intent all this while has been to make the FDI policy more investor friendly and remove the policy bottlenecks that have been hindering the investment inflows into the country. The steps taken in this direction during the last three years have borne fruit as is evident from the ever increasing volumes of FDI inflows being received into the country.

FDI trends

FDI trends during the last three years, and after the launch of Make in India initiative are presented below:

A. Trends for the period of last 3 years (2014-15 to 2016-17)



B. Trends after Make in India initiative (October, 2014 to March, 2017)

	The FDI equity inflow received after the launch of Make in India initiative i.e. October, 2014 to March, 2017 of 30 months is US\$ 99.72 billion. It shows an increase of 62% compared to previous 30 months before the launch of MII initiative i.e. April 2012 to Sept. 2014 (US \$ 61.41 billion).
	The overall manufacturing sectors have witnessed a growth of 14% in comparison to previous 30 months before launch of Make in India initiative (i.e. from US\$ 35.52 billion to US\$ 40.47 billion).
	The total FDI inflow grew by 51%, i.e. US \$ 137.44 billion in comparison to US \$ 90.98 billion of the previous 30 months before the launch of Make in India initiative i.e. April 2012 to Sept. 2014.

C. Trends in the Financial Year 2016-17

The FDI equity inflow received during the F.Y. 2016-17 is US\$ 43.48 billion. It shows an increase of 9% compared to previous F.Y. 2015-16 (US \$ 40.00 billion). It is the highest ever for a particular financial year.

The FDI equity inflow received through approval route during F.Y. 2016-17 amounts to US\$ 5.90 billion, which is 65% higher than the previous year (US \$ 3.57 billion).

The overall manufacturing sectors have witnessed a tremendous growth of 52% in comparison to previous F.Y. 2015-16 (i.e. from US\$ 13.35 billion to US\$ 20.26 billion).

The total FDI inflow grew by 8%, i.e. US \$ 60.08 billion in 2016-17 in comparison to US \$ 55.56 billion of the previous year. It is the highest ever for a particular financial year. Prior to this, the highest FDI inflow was reported in the F.Y. (2015-16).

Foreign Direct Investment in India

India's Foreign Direct Investment (FDI) is an endorsement of its status as a preferred investment destination amongst global investors. India's steady economic liberalization and its embrace of the global economy have been key factors in attracting FDI.

SHARE OF TOP INVESTING COUNTRIES FDI EQUITY INFLOWS IN INDIA⁵

Amount Rupees in Crores (US\$ in Million)

Rank		2014-15 (April – March)	2015-16 (April – March)	2016-17 (April- March)	Cumulative inflows (April,2000 March, 17)	%age to total Inflows (in terms of US \$)
1.	MAURITIUS	55,172 (9,030)	54,706 (8,355)	105,587 (15,728)	585, 950 (111,638)	34%
2.	SINGAPORE	41,350 (6,742)	89,510 (13,692)	58,376 (8,711)	315,042 (54,590)	16 %
3.	JAPAN	12,752 (2,084)	17,275 (2,614)	31,588 (4,709)	142,260 (25,675)	8%
4.	U.K.	8,769 (1,447)	5,938 (898)	9,953 (1,483)	125,545 (24,591)	7 %

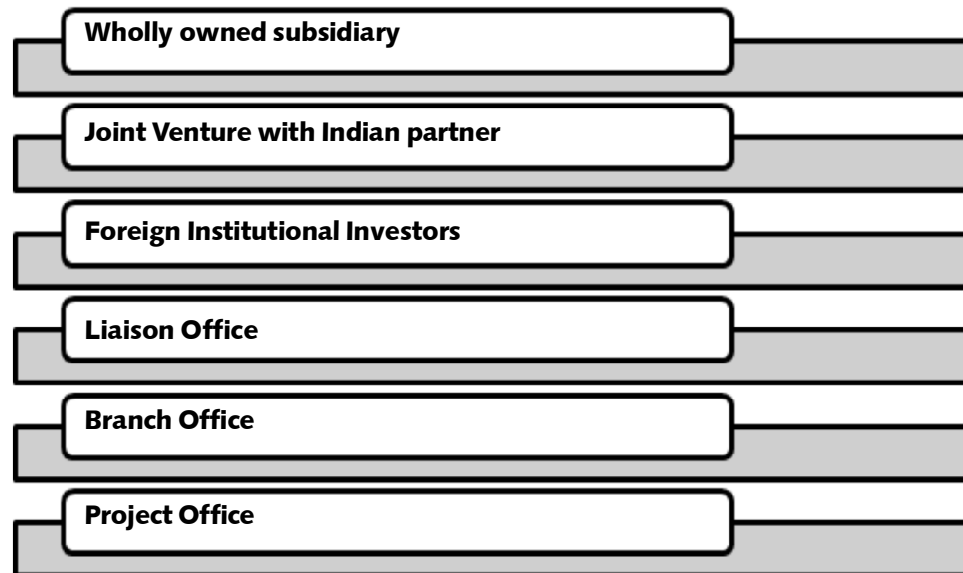
5. FDI Fact Sheet : DIPP.

Foreign Direct Investment - A Practitioner's Guide

<i>Rank</i>	<i>2014-15 (April – March)</i>	<i>2015-16 (April – March)</i>	<i>2016-17 (April- March)</i>	<i>Cumulative inflows (April,2000 - March, 17)</i>	<i>%age to total Inflows (in terms of US \$)</i>
5. NETHERLANDS	20,960 (3,436)	17,275 (2,643)	22,633 (3,367)	117,167 (20,682)	6 %
6. U.S.A.	11,150 (1,824)	27,695 (4,192)	15,957 (2,379)	110,532 (20,323)	6 %
7. GERMANY	6,904 (1,125)	6,361 (986)	7,175 (1,069)	52,045 (9,698)	3 %
8. CYPRUS	3,634 (598)	3,317 (508)	4,050 (604)	46,731 (9,156)	3 %
9. FRANCE	3,881 (635)	3,937 (598)	4,112 (614)	30,637 (5,725)	2 %
10. UAE	2,251 (367)	6,528 (985)	4,539 (675)	26,187 (4,705)	1 %
	189,107	262,322	291,696	1,787,555	
TOTAL FDI INFLOW FROM ALL COUNTRIES	(30,931)	(40,001)	(43,478)	(332,112)	

ENTRY OPTIONS & OPPORTUNITIES FOR BUSINESS IN INDIA

To do business in India, following options are available to foreign companies:



Wholly owned subsidiary : Foreign companies can set up wholly owned subsidiary companies in India in form of private companies subject to FDI guidelines. A wholly owned or a subsidiary company has the maximum flexibility to conduct business in India when compared with a liaison or branch office and has following salient features:

- Funding can be done via equity, debt (foreign as well as local) and internal accruals
- Indian transfer pricing regulations apply
- Repatriation of dividends is allowed without approvals

Joint Venture with Indian partner : Foreign companies can also set up joint venture

with Indian or foreign companies in India. There are no separate laws for joint ventures in India and laws governing domestic companies apply equally to joint ventures.

Foreign Institutional Investor : FII can also invest in India in financial markets such as pension funds, mutual funds, investment trusts and asset management companies or their power of attorney holders. FII can invest in all securities in primary and secondary markets including the equity and other instruments of companies which are listed or are to be listed on stock exchanges of India.

Liaison Office : A liaison or a representative office can be opened in India subject to approval by Reserve Bank of India. Such an office can undertake liaison activities on its company's behalf. A liaison office can also undertake:

- Representing parent/group companies in India
- Promoting import/export in India
- Promoting technical/financial collaborations on parent company/group's behalf
- Coordinating communications between parent/group companies and Indian companies

Branch Office : Foreign companies can conduct their business in India through its branch office which can be opened after obtaining a specific approval from Reserve Bank of India. A branch office can undertake following activities:

- Import & export of goods
- Rendering professional or consultancy services
- Carrying out research work in area which its parent company is engaged
- Promoting technical/financial collaborations on behalf of parent company/overseas group company
- Representing parent/group companies in India and acting as buying/selling agent in India
- Providing IT services and developing software in India
- Providing technical support for products supplied by parent company/group

Project Office : If a foreign company is engaged by an Indian company to execute a project in India, it may set up a project office without obtaining approval from Reserve Bank of India subject to prescribed reporting compliances.

As applicable in case of a branch office, a project office is treated as an extension of foreign company and is taxed at the rate applicable to foreign companies.

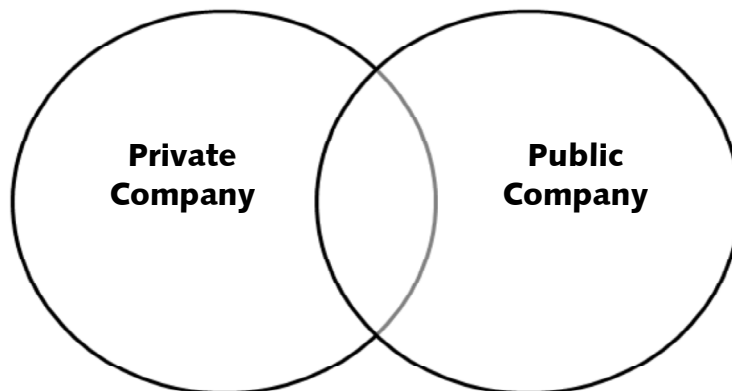
ENTRY PROCEDURE

Incorporation of a Company	Setting-up of Business	Immediate Business Compliances
<ul style="list-style-type: none"> • Obtain DIN • Draft MOA & AOA • Filing Forms with registrar • Obtain Certificate of Incorporation 	<ul style="list-style-type: none"> • Branch Office • Liaison Office • Project Office (Registration with Registrar of Companies and approval of RBI) 	<ul style="list-style-type: none"> • PAN • TAN • GST Registration • FRRO • IEC

Incorporation of a company

For registration and incorporation, application has to be filed with Registrar of Companies. Once a company has been registered and incorporated in India, it is subject to laws and regulations as applicable to other domestic companies in India.

There two types of companies which can be incorporated:



Private company : A private company is a company which has minimum of two members.

By its articles, a private company has to:

- Restrict rights to transfer its shares, if any
- Limit its shareholders to a number of two hundred
- Prohibit any invitation to public to subscribe any of its Securities

Public company: A public company is defined as a company which is not a private company. A subsidiary of a public company is also treated as a public company. A public company is required to have a minimum seven members and three directors.

Procedure of Incorporation of Company

Following steps are required to incorporate a company:

- Obtaining DIN (Director Identification Number)
- Applying for name availability
- Drafting Memorandum of Association(MOA) and Articles of Association (AOA)
- Court stamping of MOA and AOA
- Signing of MOA and AOA by first subscribers
- Filing Forms with Registrar of Companies (ROC)
- Vetting of MOA and AOA by ROC
- Obtaining Certificate of Incorporation
- Other State & Central level registrations
- Meeting annual compliances.

Immediate Business Compliances

Following registrations would be required to be done, depending on nature of business:

PAN (Permanent Account Number)	All income tax payers are required to obtain an income tax registration number i.e. PAN
GST Registration	The registration in GST is PAN based and State specific. Supplier has to register in each such State or Union territory
TAN (Tax Deduction Account Number)	While running a business, certain payments will require the payee to withhold tax. A new business is required to obtain TAN from Income Tax Department.
FRRO (Foreigners Regional registration Office)	Foreigners coming to India on employment need to register with FRRO within 14 days of their arrival.
IEC (Import Export Code)	Prior to carrying out any export or import activities, it is mandatory to obtain an IEC from Directorate General of Foreign Trade

Step Involved in Investment

- Identification of structure

-
- Central Government approval if required
 - Setting up or incorporating the structure
 - Inflow of funds via eligible instruments and following pricing guidelines
 - Meeting reporting requirements of RBI and applicable Acts/Laws
 - Registrations/obtaining key documents like PAN etc.
 - Project approval at State/UT level
 - Finding ideal space for business activity based on various parameters like incentives, cost, availability of man power etc.
 - Manufacturing projects are required to file Industrial Entrepreneur's Memorandum (IEM), some of the industries may also require industrial license
 - Construction/renovation of unit
 - Hiring of manpower
 - Obtaining licenses if any.

Entry and Investment Routes

- Foreigners can directly invest in India either on their own or as a joint venture, with a few exceptions with regard to investment limits and sectors.
- No government approval is required for FDI in virtually all sectors except a small negative list formulated by government. Sector specific guidelines are formulated by government giving sectoral investment caps if any.
- If an investment does not qualify for automatic approval, Competent Authority considers the proposal.
- Use of foreign brands names/trademarks is permitted for sales in India.
- Indian capital markets are open to FII's and Indian companies are allowed to raise funds from international capital markets
- Foreign technology collaborations are allowed with agreements on Technical knowhow fees
- NRI's can invest in shares and or convertible debentures of Indian companies on a non-repatriable basis and these investments are not considered as FDI

Other Important Aspects

- Repatriation of investment capital and profits earned:

There are three basic points to note with respect to repatriation:

1. All foreign investments are freely repatriable, subject to sectoral policies. Dividends declared on foreign investments can be remitted freely through an authorised dealer.

2. Non-residents can sell shares on the stock exchange without prior approval of the Reserve Bank of India (RBI) and repatriate the sale proceeds through a bank, if they hold the shares on repatriation basis and if they have to take necessary NOC/tax clearance certificate issued by the Income Tax authorities.
 3. For sale of shares through private arrangements, regional offices of the RBI grant permission for recognized units of foreign equity in Indian company in terms of guidelines indicated in Regulation 10.B of Notification No. FEMA.20/2000 RB dated May 2000. The sale price of shares on recognized units is to be determined in accordance with the guidelines prescribed under Regulation 10.B (2) of the above Notification (www.rbi.org.in).
- **Locational Restrictions** : Industrial undertakings are free to select the location of their projects. Industrial License is required if the proposed location is within 25 km of the Standard Urban Area limits of 23 cities having population of 1 million as per 1991 census. (www.censusindia.net)
 - **Environmental Clearances** : Entrepreneurs are required to obtain statutory clearances relating to pollution control and environment as necessary for setting up an industrial project for 31 categories of industries in terms of Notification S.O. 60 (E) dated 27.1.94 as amended from time to time, issued by the Ministry of Environment Forests & Climate Change under The Environment (Protection) Act, 1986. Details can be obtained at the website of Ministry of Environment, Forests & Climate Change.

Incentives

Central Government Incentives:

- Investment allowance
- Incentives available to units set-up in Special Economic Zones (SEZ), National Investment & Manufacturing Zones (NIMZ) etc. and Export Oriented Units (EOUs).
- Exports incentives like duty drawback, duty exemption/remission schemes, focus products & market schemes etc.
- Areas based incentives like unit set-up in North-East region, Jammu & Kashmir, Himachal Pradesh, Uttarakhand.
- Sector specific incentives like Modified Special Incentive Package Scheme (M-SIPS) in electronics.

State Government Incentives:

- Each state government has its own incentive policy which offers various types of incentives based on the amount of investments, project location, employment generation, etc. The incentives differ from state to state and are generally laid down in each state's industrial policy.
- The broad categories of state incentives include: stamp duty exemption for land acquisition, refund or exemption of value added tax, exemption from payment of electricity duty etc.

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OVERVIEW OF FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

Historical Background

The Parliament had enacted the Foreign Exchange Management Act, 1999 (FEMA) to replace the Foreign Exchange Regulation Act, 1973. The emphasis has been shifted from 'regulation' to 'management'. FEMA came into force on the 1st day of June, 2000.

Exchange Control in India dates back to 1939 when for the first time it was introduced as a war measure under the Defense of India Rules. During the World War II September 1939, there was a shortage of foreign exchange resources. A system of exchange control was first time introduced through a series of rules under the Defense of India Act, 1939 on temporary basis. The foreign crisis persisted for a long time and finally it got enacted in the statute under the title "Foreign Exchange Regulation Act, 1947." This was meant to last for 10 years. However, 10 years of economic development did not ease the foreign exchange constraint, it only made things worse. Thus, FERA permanently entered the statute book in 1957.

Subsequently, this Act was replaced by the Foreign Exchange Regulation Act, 1973 (FERA, 1973), which came into force with effect from January 1, 1974. In 1974, FERA was completely overhauled with all offences being considered as criminal offences with mens rea. The Enforcement Directorate could arrest any person without even arrest warrant.

In the 1990s, consistent with the general philosophy of economic reforms a sea change relating to the broad approach to reform in the external sector took place. In 1991 government of India initiated the policy of economic liberalization. Foreign investments in many sectors were permitted. This resulted in increased flow of foreign exchange in India and foreign exchange reserves increased substantially.

In 1997, the Tarapore Committee on Capital Account Convertibility (CAC), constituted by the Reserve Bank, had indicated the preconditions for Capital Account Convertibility. The three crucial preconditions were fiscal consolidation, a mandated inflation target and, strengthening of the financial system. The Tarapore Committee had also recommended change in the legislative framework governing foreign exchange transactions.

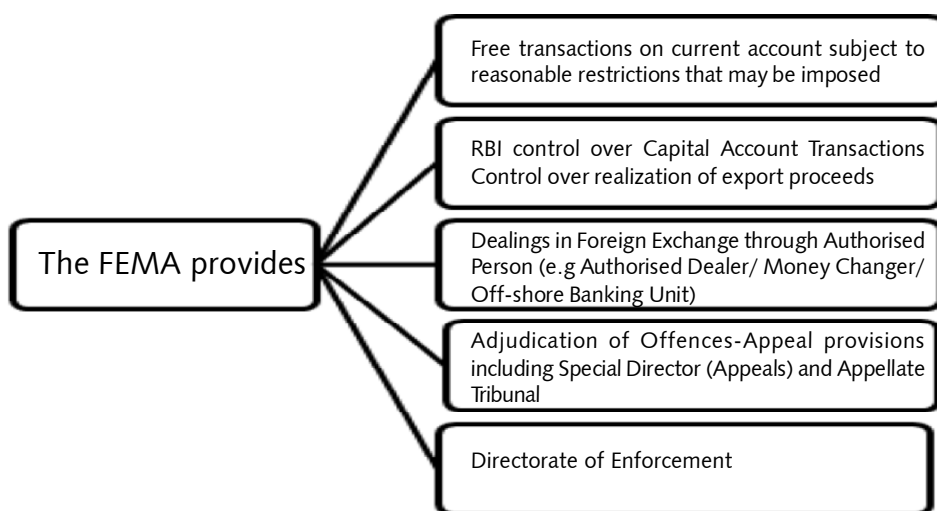
A Bill was introduced in the Lok Sabha on 4 August, 98. The Bill was referred to the standing committee on Finance which submitted its report to the House on 23 December '98 with suggestion and modifications. The 12th Lok Sabha was dissolved before any decision could be taken on the bill. The Bill subsequently lapsed. The bill

was again introduced in the 13th Lok Sabha on 25th Oct'99 and was passed in the winter session of Parliament in 1999. The Presidential Assent was received on 29th December, 1999. Finally FEMA came into operation w.e.f. 1st June 2000 vide G.S.R 371 (E), dated 1st May, 2000.

Accordingly, the Foreign Exchange Regulation Act (FERA) was repealed and replaced by the new Foreign Exchange Management Act (FEMA) with effect from June 2000. The philosophical approach was shifted from that of conservation of foreign exchange to one of facilitating trade and payments as well as developing orderly foreign exchange market.

Overview of FEMA

The Foreign Exchange Management Act, 1999 was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.



Applicability

Foreign Exchange Management Act, 1999 extends to the whole of India. The Act also applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies.

FEMA has considerably liberalised provisions in respect of foreign exchange. However, sometimes an extraordinary situation may arise. In such cases, Central Government can suspend operation of any or all provisions of FEMA in public interest, by issuing a notification. The suspension can be relaxed by issuing a notification.

Overall Scheme

FEMA makes provisions for dealings in foreign exchange. Broadly, all Current Account Transactions are free. However Central Government can impose reasonable restrictions by issuing rules (Section 3 FEMA). Capital Account Transactions are permitted to the extent specified by RBI by issuing Regulations (Section 6 of FEMA)

FEMA envisages that RBI shall have a controlling role in management of foreign exchange. Since RBI cannot directly handle foreign exchange transactions, it authorizes "Authorised Persons" to deal in foreign exchange as per directions issued by RBI. (Section 10 FEMA). RBI is empowered to issue directions to such "Authorised Persons" under Section 11.

FEMA also makes provisions for enforcement, penalties, adjudication and appeal. The FEMA 1999 contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.

FDI Policy announced by Department of Industrial Policy & Promotion, Ministry of Industries and Commerce directly relevant to understanding the provisions of FEMA. Instructions/Guidelines etc. of Ministry of Finance and Securities and Exchange Board of India (SEBI) become relevant when (ECB) /ADR/GDR and capital market is involved.

Structure

The legislations, rules and regulations, regulating Foreign Exchange Management can be divided into the following:

- FEMA Bare Act of 49 sections (Supreme Legislation) 5 Sets of Rules made by Ministry of Finance under section 46 of FEMA (Subordinate or delegated Legislations)
- Sets of Regulations made by RBI under section 47 of FEMA (Subordinate or delegated Legislations)
- Master Direction issued by RBI on every year
- Foreign Direct Investment policy issued by Department of Industrial Policy and Promotion.
- Reserve Bank of India Notifications and Circulars
- FEMA contains 7 Chapters divided into 49 sections of which 12 sections cover operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc.
- As far as transactions on account of trade in goods and services are concerned, FEMA has by and large removed the restrictions except for the enabling provision for the Central Government to impose reasonable restrictions in public interest.
- The Capital Account Transactions will be regulated by RBI / Central Government for which necessary circulars / notifications will have to be issued under FEMA.

CHAPTER I – Preliminary (Section 1&2)

CHAPTER II- Regulation and Management of Foreign Exchange (Section 3 –9)

CHAPTER III – Authorised Person (Section 10 –12)

CHAPTER IV – Contravention and Penalties (Section 13-15)

CHAPTER V – Adjudication and Appeal (Section 16- 35)

CHAPTER VI – Directorate of Enforcement (Section 36-38)

CHAPTER VII- Miscellaneous (Section 39 – 49)

Besides the FEMA, there are Set of Rules, Regulations and Master Directions under the Act which help in implementation of the Act.

The Rules under FEMA

1. FEM (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000
2. FEM (Authentication of Documents) Rules, 2000
3. FEM (Current Account Transaction) Rules, 2000
4. FEM (Adjudication Proceedings and Appeal) Rules, 2000
5. FEM (Compounding Proceedings) Rules, 2000
6. The Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and Other Conditions of Service of Chairperson and Members) Rules, 2000.

The Regulations under FEMA

1. FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015
2. FEM (Borrowing and Lending in Rupees) Regulations, 2000
3. FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000
4. FEM (Deposit) Regulations, 2016
5. FEM (Export and Import of Currency) Regulations, 2015
6. FEM (Guarantees) Regulations, 2000
7. FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
8. FEM (Establishment in India of Branch office or a Project office or any other Place of Business) Regulations, 2016
9. FEM (Export of Goods and Services) Regulations, 2015

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10. FEM (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015
 11. FEM (Insurance) Regulations, 2015
 12. FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000
 13. FEM (Manner of Receipt and Payment) Regulations, 2016
 14. FEM (Permissible Capital Account Transactions) Regulations, 2000
 15. FEM (Possession and Retention of Foreign Currency) Regulations, 2015
 16. FEM (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015
 17. FEM (Remittance of Assets) Regulations, 2016
 18. FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000
 19. FEM (Foreign Exchange Derivative Contracts) Regulations, 2000
 20. FEM (Transfer or Issue of any Foreign Security) Regulations, 2004
 21. FEM (Crystallization of inoperative Foreign Currency Deposits) Regulations, 2014
 22. FEMA. 120 (Original Notification 19)-120. F.E.M (Transfer or Issue of any foreign Security) Regulations, 2004
 23. FEM (International Financial Services Centre) Regulations, 2015
 24. FEM (Regularization of Assets Held Abroad by a Person Resident in India) Regulations, 2015

FOREIGN DIRECT INVESTMENT (FDI) IN INDIA

To promote Foreign Direct Investment (FDI), the Government has put in place an investor-friendly policy, wherein except for a small negative list, most sectors are open for 100% FDI under the Automatic route. Further, the policy on FDI is reviewed on an ongoing basis, to ensure that India remains attractive & investor friendly destination. Changes are made in the policy after having intensive consultations with stakeholders including apex industry chambers, Associations, representatives of industries/groups and other organizations taking into consideration their views/comments. The FDI policy is applicable across the sectors/ industries and equally applies to SME sector.

Understanding of Some Key Terms

'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.

'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.

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

'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.

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

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

'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.

'Competent Authority' means the concerned Administrative Ministry/Department empowered to grant government approval for foreign investment under the extant FDI Policy and FEMA Regulations.

'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements. For the purposes of Limited Liability Partnership, *'control'* will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.

'Convertible Note' means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

'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). DRs are governed by Notification No. FEMA 330/2014-RB, issued by Reserve Bank of India.

'Employees' Stock Option' means the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

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

'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.

'FDI' means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000

'FDI linked performance conditions' means the sector specific conditions for companies receiving foreign investment.

'FEMA' means the Foreign Exchange Management Act, 1999 (42 of 1999).

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

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

'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 the regulations.

'Government route' means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (Competent Ministry/Department for grant of approval).

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

- (i) exercise twenty-six percent or more of voting rights in other enterprise; or
- (ii) appoint more than fifty percent of members of board of directors in the other enterprise.

'Holding Company' would have the same meaning as defined in Companies Act, as applicable.

'Indian Company' means a company incorporated in India under the Companies Act, as applicable.

'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.

'Investment Vehicle' shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI

(InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.

'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.

'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.

'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.

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

'Manufacture', with its grammatical variations, means a change in a non-living physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

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

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

A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

'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.

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

- i. he at any time held Indian Passport; or
- ii. he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- iii. the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

'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.

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

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

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

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

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

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

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

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

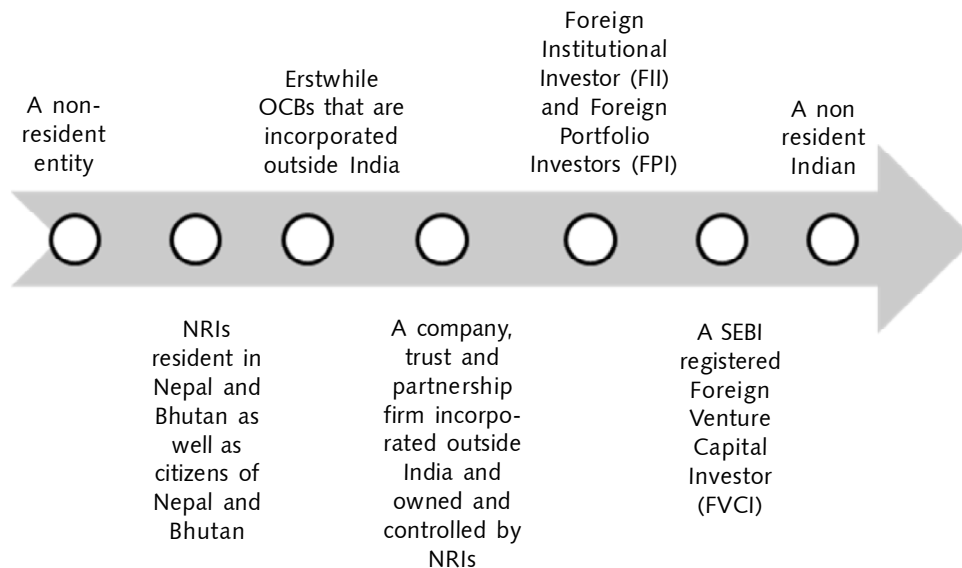
'Sweat Equity Shares' means such equity shares as issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

'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.

'Unit' shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

'Venture Capital Fund' (VCF) means a Fund registered as a 'venture capital fund' under SEBI (Venture Capital Funds) Regulations, 1996.

Eligible Investors under FDI



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

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.

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.

A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.

Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may in terms of Schedule 2 and 2A of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be, respectively, invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

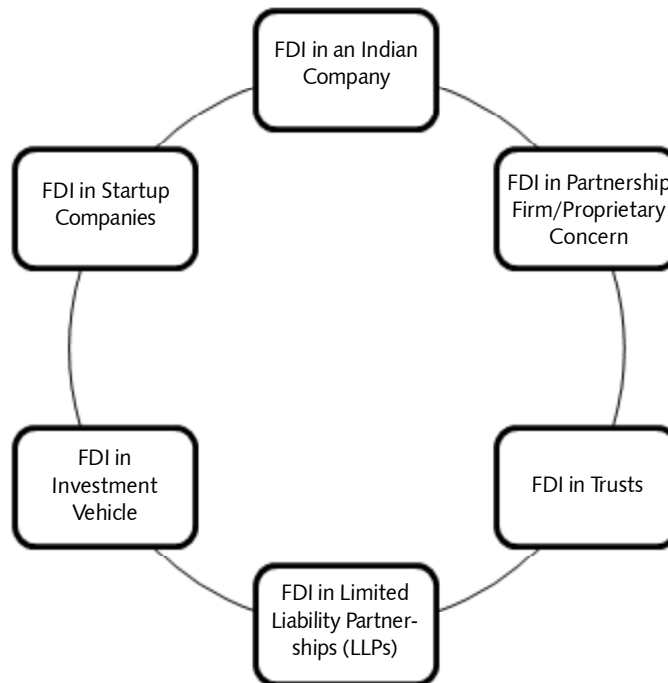
Only registered FIIs/FPIs and NRIs as per Schedules 2, 2A and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock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

A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian company engaged in any activity mentioned in Schedule 6 of Notification No. FEMA 20/2000, including startups irrespective of the sector in which it is engaged, under the automatic route. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996 or a Category- I Alternative Investment Fund registered under the SEBI (Alternative Investment Fund) Regulations, 2012. Such investments shall also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps etc. The investment can be made in equities or equity linked instruments or debt instruments issued by the company (including start-ups and if a startup is organised as a

partnership firm or an LLP, the investment can be made in the capital or through any profit-sharing arrangement) or units issued by a VCF or by a Category-I AIF either through purchase by private arrangement either from the issuer of the security or from any other person holding the security or on a recognised stock exchange. It may also set up a domestic asset management company to manage its investments. 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.

A Non-Resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

ELIGIBLE INVESTEE ENTITIES



FDI in an Indian Company

Indian companies can issue capital against FDI.

FDI in Partnership Firm/Proprietary Concern

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

FDI in Trusts

FDI is not permitted in Trusts other than in Venture Capital Fund (VCF) registered and regulated by SEBI and 'Investment vehicle'.

FDI in Limited Liability Partnerships (LLPs)

FDI in LLPs is permitted subject to the following conditions:

- (i) FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- (ii) An Indian company or an LLP, having foreign investment is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
- (iii) Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an

LLP is permitted under automatic route. FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

FDI in Investment Vehicle

An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

FDI in Startup Companies

Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance, as per the FEMA Regulation. In addition, start-ups can issue convertible notes to person resident outside India subject to the following conditions:

1. A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered / incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

'Startup Company' means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, and as amended from time to time.

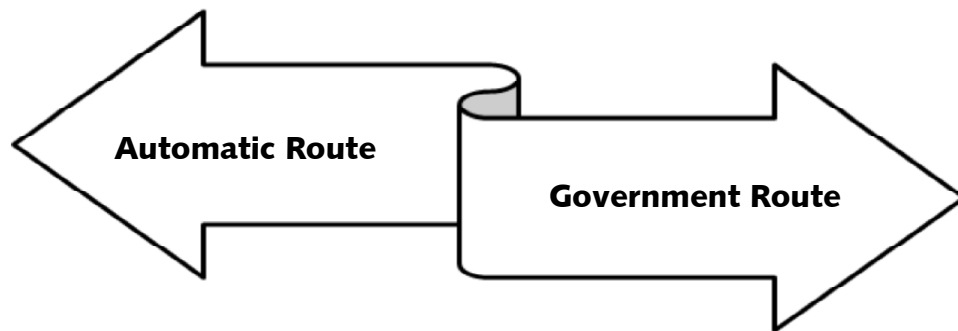
2. A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government.
3. A startup company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

However an escrow account for the above purpose shall be closed immediately after the requirements are completed or within a period of six months, whichever is earlier. However, in no case continuance of such escrow account shall be permitted beyond a period of six months.

4. NRIs may acquire convertible notes on non-repatriation basis in accordance with Schedule 4 of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000.

5. A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.
6. The startup company issuing convertible notes shall be required to furnish reports as prescribed by Reserve Bank of India.

ENTRY ROUTES FOR INVESTMENT



An Indian company may receive Foreign Direct Investment under the two routes as given under:

Automatic Route

FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government. Proposals for foreign investment under Government route, are considered by respective Administrative Ministry/Department.

Foreign investment in sectors/activities under government approval route will be subject to government approval where:

- (i) An Indian company is being established with foreign investment and is not owned by a resident entity or
- (ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled

by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
- (v) It is clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11 (Investment Vehicles) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.
- (vi) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents.
- (vii) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations and such investment will also be deemed domestic investment at par with the investment made by residents.

Competent Authority

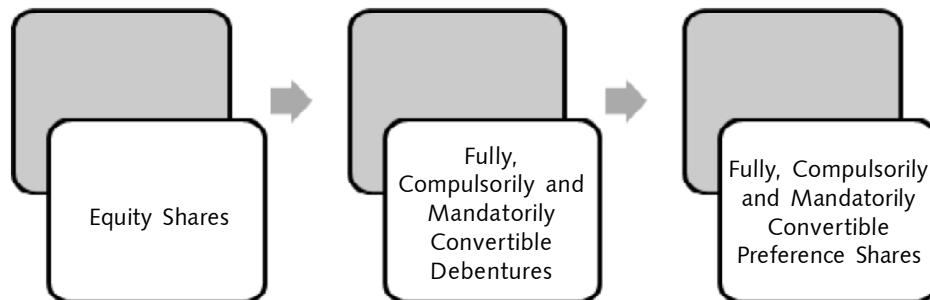
Following are the Competent Authorities for grant of approval for foreign investment for sectors/activities requiring Government approval:

<i>S. No.</i>	<i>Activity/ sector</i>	<i>Administrative Ministry/ Department</i>
(i)	Mining	Ministry of Mines
(ii)	Defence (a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP	Department of Defence Production, Ministry of Defence

<i>S. No.</i>	<i>Activity/ sector</i>	<i>Administrative Ministry/ Department</i>
	(b) Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959	Ministry of Home Affairs
(iii)	Broadcasting	Ministry of Information & Broadcasting
(iv)	Print Media	
(v)	Civil Aviation	Ministry of Civil Aviation
(vi)	Satellites	Department of Space
(vii)	Telecommunication	Department of Telecommunications
(viii)	Private Security Agencies	Ministry of Home Affairs
(ix)	Applications involving investments from Countries of Concern which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time	Ministry of Home Affairs
(x)	Trading (Single brand, Multi brand and Food Product retail trading)	Department of Industrial Policy & Promotion
(xi)	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government	-do-
(xii)	Applications relating to issue of equity shares under the FDI policy under the Government route for import of capital goods/machinery/equipment (excluding second-hand machinery)	-do-
(xiii)	Applications relating to issue of equity shares for pre-operative/pre-	-do-

<i>S. No.</i>	<i>Activity/ sector</i>	<i>Administrative Ministry/ Department</i>
	incorporation expenses (including payments of rent etc.)	
(xiv)	Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight	Department of Economic Affairs
(xv)	Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company/ies	-do-
(xvi)	Banking (Public and Private)	Department of Financial Services
(xvii)	Pharmaceuticals	Department of Pharmaceuticals

Instruments for Investments



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

The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.

Caps on Investments

Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy.

Entry Conditions on Investment

Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for:

- Minimum capitalization
- Lock-in period.

Other Conditions on Investment besides Entry Conditions

Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant

- Sectoral laws, regulations, rules
- Security conditions, and
- State/local laws/regulations.

PROHIBITED SECTORS

FDI is prohibited in:

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

Gambling and Betting including casinos etc.

Chit Funds

Nidhi Company

Trading in Transferable Development Rights (TDRs)

Real Estate Business* or Construction of Farm Houses

Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations(other than permitted activities).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting

Note:- 'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.*

PERMITTED SECTORS

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions;	100%	Automatic
Development and Production of seeds and planting material;	100%	Automatic
Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture;	100%	Automatic
Services related to agro and allied sectors Note: Besides the above, FDI is not allowed in any other agricultural sector/activity	100%	Automatic
Tea sector including tea plantations	100%	Automatic

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Coffee plantations	100%	Automatic
Rubber plantations	100%	Automatic
Cardamom plantations	100%	Automatic
Palm oil tree plantations	100%	Automatic
Olive oil tree plantations Note: Besides the above, FDI is not allowed in any other plantation sector/activity.	100%	Automatic
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
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
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
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities. Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).	100%	Automatic

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
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
Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic up to 49% Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded
Teleports (setting up of up-linking HUBS/ Teleports);	100%	Automatic
Direct to Home (DTH);	100%	Automatic
Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);	100%	Automatic
Mobile TV;	100%	Automatic

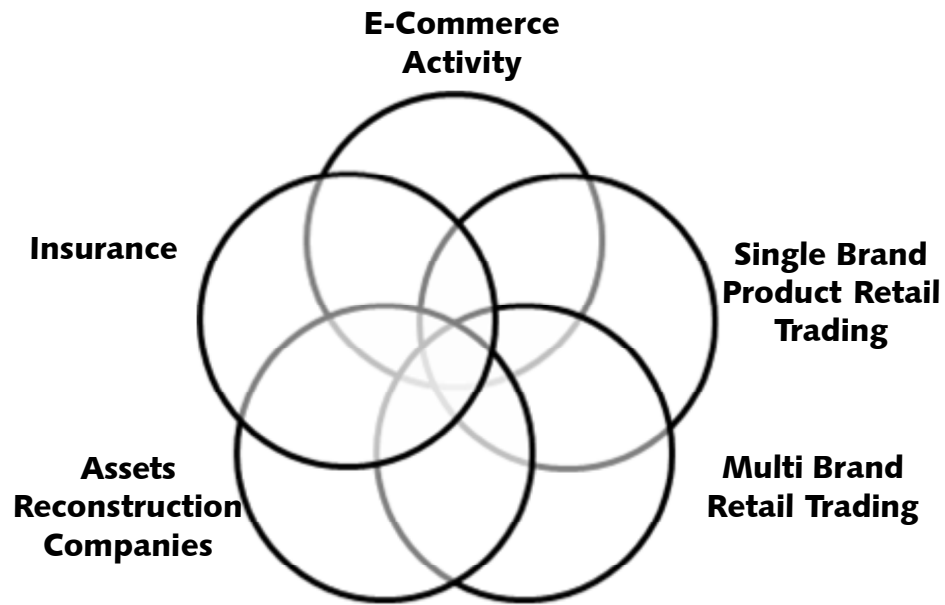
<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Headend - in -the Sky Broadcasting Service (HITS)	100%	Automatic
Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	100%	Automatic
Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
Up-linking of 'News & Current Affairs' TV Channels	49%	Government
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic
Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
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
Publication of facsimile edition of foreign newspapers	100%	Government
Airport (Greenfield projects)	100%	Automatic
Airport (Existing projects)	100%	Automatic

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Non-Scheduled Air Transport Services	100%	Automatic
Helicopter services / seaplane services requiring DGCA approval	100%	Automatic
Ground Handling Services subject to sectoral regulations and security clearance.	100%	Automatic
Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic
Industrial Parks -new and existing	100%	Automatic
Satellites - establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Private Security Agencies	74%	Automatic up to 49% Government route beyond 49% and up to 74%
Telecom Services (including Telecom Infrastructure Providers Category-I) All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49% Government route beyond 49%
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
E-commerce activities	100%	Automatic
Single Brand product retail trading	100%	Automatic up to 49% Government route beyond 49%
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure	100%	Automatic

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
<p>Construction, operation and maintenance of the following:</p> <ul style="list-style-type: none"> (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems. 		
Asset Reconstruction Company' (ARC)	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
Banking - Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government
Credit Information Companies	100%	Automatic

<i>Sector/Activity</i>	<i>% of Equity/ FDI Cap</i>	<i>Entry Route</i>
Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49%	Automatic
Insurance Company	49%	Automatic
Insurance Brokers	49%	Automatic
Third Party Administrators	49%	Automatic
Surveyors and Loss Assessors	49%	Automatic
Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)	49%	Automatic
Pension Sector	49%	Automatic
Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	Automatic
White Label ATM Operations	100%	Automatic
Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
Pharmaceutical (Greenfield)	100%	Automatic
Pharmaceutical (Brownfield)	100%	Automatic up to 74% Government route beyond 74%

CONDITIONS OF FDI IN MAJOR SECTOR

FDI in E-Commerce Activities

Subject to provisions of FDI Policy, e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.

E-commerce means buying and selling of goods and services including digital products over digital & electronic network.

E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2(v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

Other Conditions of Investment

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.

- FDI is not permitted in inventory based model of e-commerce.
- Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.
- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model.
- An e-commerce entity will not permit more than 25% of the sales value on financial year basis affected through its marketplace from one vendor or their group companies.
- In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
- Guidelines on cash and carry wholesale trading of FDI Policy will apply on B2B e-commerce.
- Subject to the conditions of FDI policy on services sector and applicable laws/ regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

FDI in Single Brand Product Retail Trading

In Single Brand product retail trading, 49% FDI is allowed under Automatic route and beyond 49% under Government route.

- (1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India,

and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

- (2) FDI in Single Brand product retail trading would be subject to the following conditions:
- (a) Products to be sold should be of a 'Single Brand' only.
 - (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
 - (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.
 - (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and to competent authority for cases involving approval.
 - (e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business i.e. opening of the first store. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of foreign investment for the purpose of carrying out single-brand product retail trading.
 - (f) Subject to the conditions, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.
- (3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a

'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.

FDI in Multi Brand Retail Trading

In Multi Brand Retail Trading, 51% FDI allowed under Government route.

- (1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:
 - (i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.
 - (ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.
 - (iii) At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.
 - (iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US \$ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US \$ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.
 - (v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

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- (vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.
 - (vii) Government will have the first right to procurement of agricultural products.
 - (viii) The above policy is an enabling policy only and the State Governments/ Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc.
 - (ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.
- (2) List of States/Union Territories are:
1. Andhra Pradesh
 2. Assam
 3. Delhi
 4. Haryana
 5. Himachal Pradesh
 6. Jammu & Kashmir
 7. Karnataka
 8. Maharashtra
 9. Manipur
 10. Rajasthan
 11. Uttarakhand
 12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

FDI in Asset Reconstruction Companies

100 % FDI allowed in 'Asset Reconstruction Company' (ARC). '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).

Conditions for Investment in ARC:

- (i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.
- (ii) Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time. Similarly, investment by institutional / non-institutional investors will also be governed by the said Act, as amended from time to time.
- (iii) The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.
- (iv) FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs. FIIs/FPIs may be allowed to invest up to 100 per cent of each tranche in SRs issued by ARCs, subject to directions/guidelines of Reserve Bank of India. Such investment should be within the relevant regulatory cap as applicable.
- (v) All investments would be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time.

FDI in Insurance

49% FDI is allowed in (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development authority Act, 1999 (41 of 1999) under Automatic route .

Conditions of Investment

- (a) No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine percent of the paid up equity capital of such Indian Insurance company.
- (b) The foreign investment up to forty-nine percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.
- (c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license /approval from the Insurance

Regulatory & Development Authority of India for undertaking insurance and related activities.

- (d) An Indian Insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services/ Insurance Regulatory and Development Authority of India as per the rules/regulations issued by them from time to time.
- (e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in sub-regulations (2), (2A), (3) and (8) of Regulation 5 of FEMA Regulations, 2000 and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.
- (f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.
- (g) The foreign equity investment cap of 49 percent shall apply on the same terms as above to Insurance Brokers, Third Party Administrators, Surveyors and Loss Assessors and Other Insurance Intermediaries appointed under the provisions of the Insurance Regulatory and Development Authority Act, 1999
- (h) Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from their primary (i.e., non-insurance related) business must remain above 50 percent of their total revenues in any financial year.
- (i) The Certain provisions relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.

TYPES OF INSTRUMENTS THAT CAN BE USED UNDER FDI

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 [as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies].

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

- (a) There is a minimum lock-in period of one year which shall be effective from the date of allotment of such capital instruments.

- (b) After the lock-in period and subject to FDI Policy provisions, if any, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.
- 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. The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.
- 4. Acquisition of Warrants and Partly Paid Shares - An Indian Company may issue warrants and partly paid shares to a person resident outside India subject to terms and conditions as stipulated by the Reserve Bank of India in this behalf, from time to time.
- 5. Issue of Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts (DRs)
 - (a) FCCBs/DRs may be issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and DR Scheme 2014 respectively, as per the guidelines issued by the Government of India there under from time to time.
 - (b) DRs are foreign currency denominated instruments issued by a foreign depository in a permissible jurisdiction against a pool of permissible securities issued or transferred to that foreign depository and deposited with a domestic custodian.
 - (c) A person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014 and guidelines issued by the Government of India there under from time to time.
 - (d) A person can issue DRs, if it is eligible to issue eligible instruments to person resident outside India under Schedules 1, 2, 2A, 3, 5 and 8 of the FEM (Transfer or Issue of Security by a person Resident outside India) Regulations, 2000, as amended from time to time.
 - (e) The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the relevant regulations framed under FEMA, 1999.

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- (f) The pricing of eligible securities to be issued or transferred to a foreign depository for the purpose of issuing depository receipts should not be at a price less than the price applicable to a corresponding mode of issue or transfer of such securities to domestic investors under the relevant regulations framed under FEMA, 1999.
- (g) The issue of depository receipts as per DR Scheme 2014 shall be reported to the Reserve Bank by the domestic custodian as per the reporting guidelines for DR Scheme 2014.
6. (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.

ISSUE/ TRANSFER OF SHARES

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

Issue price of shares

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

- a. the price worked out in accordance with the SEBI guidelines, as applicable,

where the shares of the company are listed on any recognised stock exchange in India;

- b. the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and
- c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

Foreign Currency Account

Indian companies which are eligible to issue shares to person's 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.

Transfer of shares and convertible debentures

Subject to FDI sectoral policy (relating to sectoral caps and entry routes), applicable laws and other conditionalities including security conditions, non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

- (a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs). Government approval is not required for transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. In addition, approval of Government will be required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route.
- (b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
- (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
- (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
- (e) A person resident in India can transfer by way of sale, shares/ convertible

debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the guidelines.

- (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.
- (g) The above general permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company.
- (h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India. However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank.

The 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.

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

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

to the terms and conditions as specified by RBI. In both cases, the Escrow agent shall necessarily be an AD Category-I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from/to the non- residents.

In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement. For this purpose, if so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement or if the total consideration is paid by the buyer to the seller, the seller may furnish an indemnity for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the payment of the full consideration.

However the total consideration finally paid for the shares must be compliant with the applicable pricing guidelines.

Prior Permission of RBI in Certain Cases for Transfer of Capital Instruments

In the following cases prior approval of RBI is required:

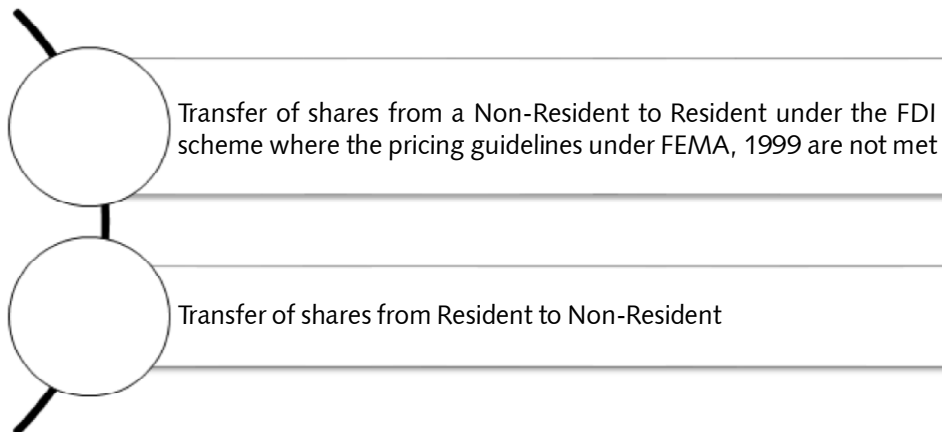
- Transfer of capital instruments from resident to non-residents by way of sale
- Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents should be enclosed
- Transfer of shares from NRI to non-resident.

- (i) Transfer of capital instruments from resident to non-residents by way of sale where:
 - (a) Transfer is at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
 - (b) Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration. Further, in case

approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category-I bank for necessary due diligence, within 60 days from the date of receipt of the full and final amount of consideration.

- (ii) Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents 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 2 (77) of Companies Act, 2013, as amended from time to time.
 - (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 during the financial year.
 - (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.
- (iii) Transfer of shares from NRI to non-resident.

In the Following Cases, Approval of RBI is not Required



- A. *Transfer of shares from a Non-Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that:*
- (i) The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
 - (ii) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST, buy back); and
 - (iii) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.
- B. *Transfer of shares from Resident to Non-Resident:*
- (i) where the transfer of shares requires the prior approval of the Government as per the extant FDI policy provided that:
 - (a) the requisite approval of the Government has been obtained; and
 - (b) the transfer of shares adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
 - (ii) where the transfer of shares attract SEBI (SAST) Regulations subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.
 - (iii) where the transfer of shares does not meet the pricing guidelines under the FEMA, 1999 provided that:
 - (a) The resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc.;
 - (b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST); and
 - (c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.
 - (iv) where the investee company is in the financial sector provided that:
 - (a) Any 'fit and proper/due diligence' requirements as regards the non-resident investor as stipulated by the respective financial sector regulator, from time to time, have been complied with; and
 - (b) The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, pricing, etc.), reporting requirements, documentation etc., are complied with.

CONVERSION OF ECB/LUMP SUM FEE/ROYALTY ETC. INTO EQUITY

- (I) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements:
 - (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
 - (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
 - (c) Pricing of shares is as per the issue price of shares;
 - (d) Compliance with the requirements prescribed under any other statute and regulation in force; and
 - (e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- (II) General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty due for payment, subject to entry route, sectoral cap and pricing guidelines (as per the issue price of shares) and compliance with applicable tax laws. Further, issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued there under, or has been permitted by the Reserve Bank under the Act or the rules and regulations framed or directions issued there under is permitted, provided that:
 - (a) The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time;
 - (b) The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.
- (III) A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no FDI linked conditionalities, may issue equity shares or preference shares or convertible debentures or warrants to the said non-resident entity against pre-incorporation/ pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less, subject to the conditions laid down below:
 - (a) Within thirty days from the date of issue of equity shares or preference

shares or convertible debentures or warrants but not later than one year from the date of incorporation or such time as Reserve Bank of India or Government of India permits, the Indian company shall report the transaction in the Form FC-GPR (See Appendix - I) to the Reserve Bank.

- (b) The valuation of the equity shares or preference shares or convertible debentures or warrants shall be subject to the provisions of Schedule 1 of the FEM (Transferor Issue of Security by a person resident outside India) Regulations.
- (c) A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/pre-operative expenses against which equity shares or preference shares or convertible debentures or warrants have been issued has been utilized for the purpose for which it was received should be submitted with the FC-GPR form.

Explanation : Pre-incorporation/pre-operative expenses shall include amounts remitted to Investee Company's account, to the investor's account in India if it exists, to any consultant, attorney or to any other material/service provider for expenditure relating to incorporation or necessary for commencement of operations.

- (IV) Issue of equity shares under the FDI policy is allowed under the Government route for the following:
 - (i) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the following conditions:
 - (a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.
 - (b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.
 - (c) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
 - (ii) Pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:
 - (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
 - (b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.
 - (c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.
 - (d) The applications, complete in all respects, for capitalization being made

within the period of 180 days from the date of incorporation of the company.

General conditions

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

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.

Such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, as applicable, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc.

The offer on right basis to the person's 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.

Additional allocation of rights share by residents to non-residents

- (i) 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.
- (ii) 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.

ACQUISITION OF SHARES UNDER SCHEME OF MERGER/DEMERGER/AMALGAMATION

- (I) 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.
- (II) 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.

Note: Government approval would not be required in case of mergers and acquisitions taking place in sectors under automatic route.

ISSUE OF EMPLOYEES STOCK OPTION SCHEME (ESOPS) / SWEAT EQUITY

An Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that :

- (a) The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.
- (b) The "employee's stock option" / "sweat equity shares" issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.
- (c) Issue of "employee's stock option" / "sweat equity shares" by a company where foreign investment is under the approval route shall require prior approval of Government of India.
- (d) Issue of "employee's stock option" / "sweat equity shares" under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Government of India.
- (e) The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees' stock option or sweat equity shares, a return as per the Form-ESOP.

SHARE SWAP

- (i) In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.
- (ii) Approval of the Government will also be a prerequisite for investment by swap of shares for sector under Government approval route.
- (iii) No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

PLEDGE OF SHARES

- (A) A person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowings, may pledge the shares of the borrowing company or that of its associate resident companies for

the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer.

The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that:

- (i) the loan agreement has been signed by both the lender and the borrower,
- (ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and
- (iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank:

and the said pledge would be subject to the following conditions:

- (a) the period of such pledge shall be co-terminus with the maturity of the underlying ECB;
- (b) in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;
- (c) the Statutory Auditor has certified that the borrowing company will utilize/ has utilized the proceeds of the ECB for the permitted end use/s only.

(B) Non-residents holding shares of an Indian company, can pledge these shares in favour of the AD bank in India to secure credit facilities being extended to the resident investee company for bonafide business purpose, subject to the following conditions:

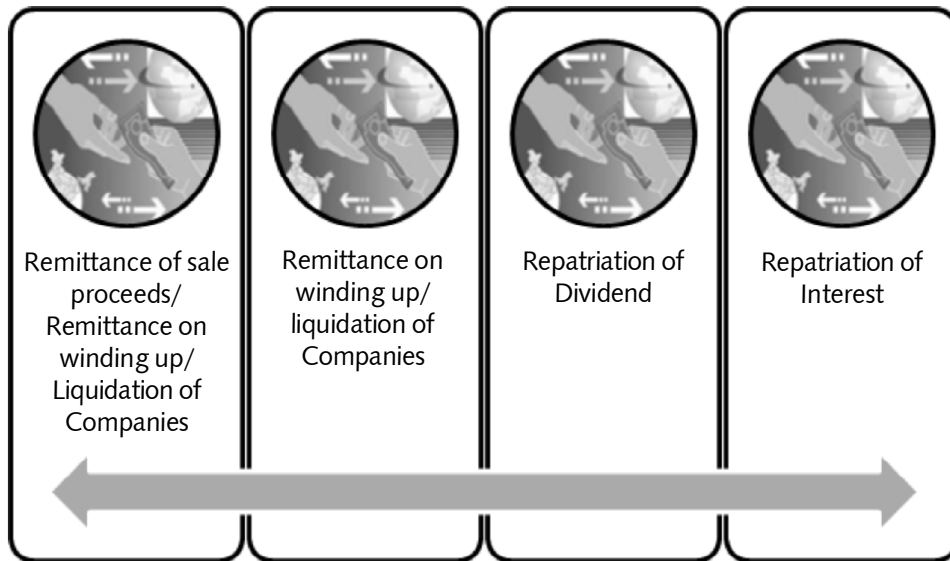
- (i) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;
- (ii) submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;
- (iii) the Indian company has to follow the relevant SEBI disclosure norms; and
- (iv) pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.

(C) Non-residents holding shares of an Indian company, can pledge these shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor/non-resident promoter of the Indian company or its overseas group company, subject to the following:

- (i) loan is availed of only from an overseas bank;
- (ii) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;
- (iii) overseas investment should not result in any capital inflow into India;

- (iv) in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and
- (v) submission of a declaration/annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

REMITTANCE AND REPATRIATION



Remittance of sale proceeds

- (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.

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, , as applicable.

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

Repatriation of Dividend

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

Repatriation of Interest

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

MODES OF PAYMENT ALLOWED FOR RECEIVING FDI IN AN INDIAN COMPANY

An Indian company issuing shares/ convertible debentures to a person resident outside India shall receive the amount of consideration by:

- (a) inward remittance through normal banking channels;
- (b) debit to NRE/ FCNR (B) account of a person concerned maintained with an AD Category I bank;
- (c) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration;
- (d) conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB;
- (e) conversion of pre-incorporation/ pre-operative expenses incurred by the a non-

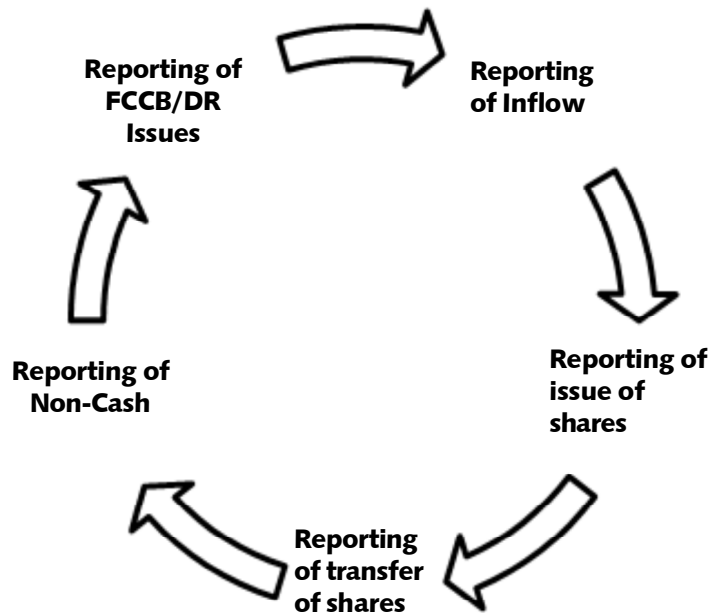
resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less;

- (f) conversion of import payables/ pre incorporation expenses/ can be treated as consideration for issue of shares with the approval of FIPB;
- (g) against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India: and
- (h) Swap of capital instruments, provided where the Indian investee company is engaged in a Government route sector, prior Government approval shall be required

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR (B)/ Escrow account, the amount shall be refunded.

Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund/ allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

REPORTING OF FDI



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**.
- (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 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.
- (iii) An Indian company issuing partly paid equity shares, shall furnish a report not later than 30 days from the date of receipt of each call payment.

Reporting of issue of shares

- (i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP and against Convertible Notes)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, (See Appendix - I) 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, as applicable, have been complied with;
 - (B) terms and conditions of the Government of India approval, if any, have been complied with;
 - (C) the company is eligible to issue shares; and
 - (D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

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

 - (b) A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
 - (c) The report of receipt of consideration as well as Form FC-GPR have to be

submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Note: An Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.

- (d) Annual return on Foreign Liabilities and Assets should be filed on an annual basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 15th of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information submitted by 15th 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. (See Appendix - I)

Reporting of transfer of shares

- (i) Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS.
- (ii) 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.
- (iii) The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.
- (iv) In cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

Reporting of Non-Cash

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

- (i) In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai-400 051, within seven working days from the close of month to which it

relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.

- (ii) In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion." The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

Reporting of FCCB/DR Issues

The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' within 30 days of close of the issue/ program.

ADHERENCE TO GUIDELINES/ORDERS

- (i) FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA.
- (ii) 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.

ESTABLISHMENT OF BRANCH OFFICE (BO)/ LIAISON OFFICE (LO)/PROJECT OFFICE (PO) IN INDIA

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 and amended from time to time.

Branch Office

Branch office in relation to a company, means any establishment described as such by the company.

Permitted activities for a branch office in India of a person resident outside India

Normally, the branch office should be engaged in the activity in which the parent company is engaged.

- (i) Export/import of goods.
- (ii) Rendering professional or consultancy services.
- (iii) Carrying out research work in which the parent company is engaged.
- (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (v) Representing the parent company in India and acting as buying/ selling agent in India.
- (vi) Rendering services in Information Technology and development of software in India.
- (vii) Rendering technical support to the products supplied by parent/group companies.
- (viii) Representing a foreign airline/shipping company.

Liaison Office

Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Permitted activities for a liaison office in India of a person resident outside India

- (i) Representing the parent company / group companies in India.
- (ii) Promoting export / import from / to India.
- (iii) Promoting technical/ financial collaborations between parent / group companies and companies in India.
- (iv) Acting as a communication channel between the parent company and Indian companies.

Project Office

Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Parameters of project office

A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

- (i) the project is funded directly by inward remittance from abroad; or
- (ii) the project is funded by a bilateral or multilateral International Financing Agency; or
- (iii) the project has been cleared by an appropriate authority; or
- (iv) a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

*The Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the **Bar Council of India vs A.K. Balaji & Ors.**, has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard. However, foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force. No fresh permissions/ renewal of permission shall be granted by the Reserve Bank/AD Category-I banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.*

General criteria

- (i) Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-I bank as per the guidelines given by Reserve Bank of India (RBI). If the principal business of the entity resident outside India falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000., as amended from time to time, and the entity seeks to open a BO/LO/

PO, the AD Category-I bank may consider such applications under the delegated powers.

- (ii) An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:

The applicant is a citizen of or is registered/incorporated in Pakistan

The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;

The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.*

The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.**

* In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. No separate approval is required from Reserve Bank of India for such cases only.

** Such applications may be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110 001 who shall process the applications in consultation with the Government of India.

- (iii) The non-resident entity applying for a BO/LO in India should have a financially sound track record viz:

<i>Branch Office/ Liaison Office</i>	<i>Track Record</i>
Branch Office	A profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent. Net Worth [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name called].
Liaison Office	A profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.
An applicant that is not financially sound and is a subsidiary of another company	May submit a Letter of Comfort (LOC) from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit.

Procedure for Establishment

- (i) The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC (See Appendix - II) to a designated AD Category - I bank (i.e. an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations) along with the prescribed documents and the LOC, wherever applicable.

Following are the prescribed documents:

- a. Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.

[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/ attested by the Indian Embassy/ Consulate in the home country].

- b. Audited Balance sheet of the applicant company for the last three/ five years in case of branch office/liason office respectively.

[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant

(CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted]

- c. Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.
- d. Power of Attorney in favour of signatory of Form FNC (See Appendix - II) in case the Head of the overseas entity is not signing the Form FNC.

The AD Category-I bank shall after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms grant approval to the foreign entity for establishing BO/LO/PO in India.

- (ii) However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/LO.

After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India. This is in order to enable the Reserve Bank to keep, maintain and upload up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India, on its website.

- (iii) The validity period of an LO is generally for three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only.

The validity period of the project office is for the tenure of the project.

- (iv) An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly. In case an approval granted by the AD bank has either been surrendered by the applicant or has expired without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly.
- (v) The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require the prior approval of Reserve Bank of India in this regard.
- (vi) All applications for establishing a BO/LO in India by foreign banks and insurance

companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

- (vii) There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to the conditions that:
- a. such BOs are functioning in those sectors where 100% FDI is permitted;
 - b. such BOs comply with Chapter XXII of the Companies Act, 2013; and
 - c. such BOs function on a stand-alone basis.

Opening of bank account by BO/LO/PO

- (i) An LO may approach the designated AD Category I Bank in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India. The permitted Credits and Debits to the account shall be:
- a. Credits
 1. Funds received from Head Office through normal banking channels for meeting the expenses of the office.
 2. Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels.
 3. Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
 4. Sale proceeds of assets of the LO.
 - b. Debits

Only for meeting the local expenses of the office.
- (ii) A BO may approach any AD Category-I Bank in India to open an account for its operations in India. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. Debits to this account shall be for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.
- (iii) Any foreign entity except an entity from Pakistan who has been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank. An entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its project office in India.

- (iv) AD Category – I banks can open non-interest bearing foreign currency account for POs in India subject to the following:
- a. The PO has been established in India, with the general / specific permission of Reserve Bank of India, having the requisite approval from the concerned Project Sanctioning Authority concerned as per FEM (Establishment in India of Branch Office or a Project Office or any other Place of Business Regulations, 2016).
 - b. The contract governing the project specifically provides for payment in foreign currency.
 - c. Each PO can open two foreign currency accounts, usually one denominated in USD and other in home currency of the project awardee, provided both are maintained with the same AD Category–I bank.
 - d. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/group company abroad or bilateral / multilateral international financing agency.
 - e. The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category–I bank. Further, the accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD Category–I bank.
 - f. The foreign currency accounts have to be closed at the completion of the project.

Annual Activity Certificate by BO/LO/PO

- (i) The Annual Activity Certificate (AAC) (See Appendix - III) as at the end of March 31 each year along with the required documents needs to be submitted by the following:
 - a. In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
 - b. In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.
- (ii) The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank, the same should immediately be reported to the General Manager, Reserve Bank of India, CO Cell, New Delhi, along with the copy of the AAC and their comments thereon.

Extension of validity period of the approval of LO and PO

- (i) Requests for extension of time for LOs may be submitted before the expiry of

the validity of the approval, to the AD Category-I bank concerned under whose jurisdiction the LO/nodal office is located. The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted if the applicant has complied with the following conditions and the application is otherwise in order:

- a. The LO should have submitted the Annual Activity Certificates for the previous years and
- b. The account of the LO maintained with the designated AD Category – I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

Such extension has to be granted, as expeditiously as possible as and in any case not later than one month from the receipt of the request under intimation to the General Manager, Reserve Bank of India, CO Cell, New Delhi quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on its website immediately.

- (ii) Further, entities engaged in construction and development sectors and Non-Banking Finance Companies are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

Application for additional offices and activities

- (i) Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
 - a. If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.
 - b. The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
 - c. Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject

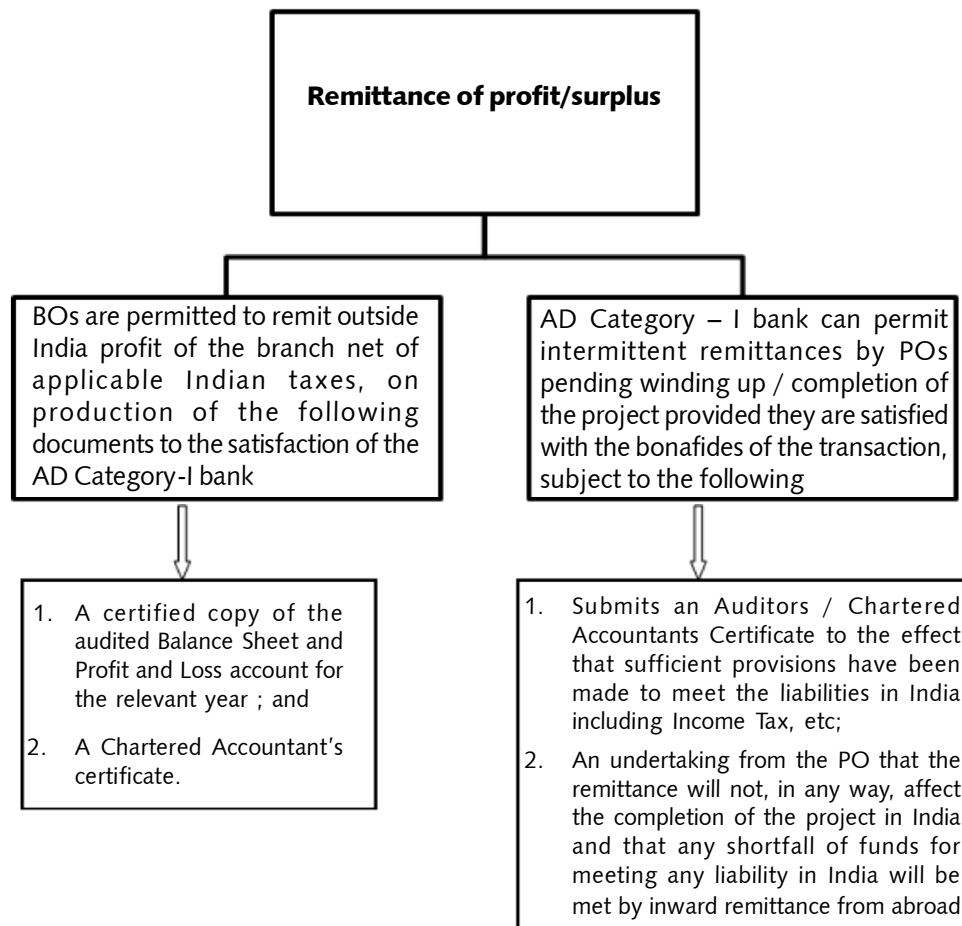
to the condition that the new address is intimated to the designated AD Category-I bank. Changes in the postal address may be intimated to the CO Cell, New Delhi by the AD Category-I bank at the earliest.

- (ii) Requests for undertaking activities in addition to what has been permitted initially (Annex C) by Reserve Bank of India/ AD Category-I bank may be submitted by the applicant to the Reserve Bank through the designated AD Category -I bank justifying the need.

Extension of fund and non-fund based facilities

AD Category-I bank, may based on their business prudence, Board approved policy and compliance to extant rules/regulations stipulated by DBR, RBI extend fund/non-fund based facilities to BOs/POs only.

Remittance of profit/surplus



- i. BOs are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the AD Category-I bank through whom the remittance is effected:
 - a. A certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year.
 - b. A Chartered Accountant's certificate certifying
 - I. the manner of arriving at the remittable profit;
 - II. that the entire remittable profit has been earned by undertaking the permitted activities; and
 - III. that the profit does not include any profit on revaluation of the assets of the branch.
- ii. AD Category – I bank can permit intermittent remittances by POs pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:
 - a. The PO submits an Auditors' / Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.
 - b. An undertaking from the PO that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

Closure of BO/LO/PO

1. Requests for closure of the BO / LO/ PO and submit the application along with following documents for remittance of winding up proceeds of BO / LO/ PO to the designated AD Category - I bank

- Copy of the Reserve Bank's/AD Category-I bank's approval
- Auditor's certificate ;
- Confirmation from the applicant/parent company that no legal proceedings is pending in any Court in India ;
- A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013;
- The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs ; and
- Any other document/s, specified by Reserve Bank of India/AD Category-I bank.

2. Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

-
- (i) Requests for closure of the BO / LO/ PO and allowing the remittance of winding up proceeds of BO / LO/ PO may be submitted to the designated AD Category - I bank by the BO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submitted along with the following documents:
 - a. Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
 - b. Auditor's certificate:
 - (i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
 - (ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
 - (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
 - c. Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
 - d. A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO / LO in India, wherever applicable.
 - e. The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
 - f. Any other document/s, specified by Reserve Bank of India/AD Category-I bank while granting approval.
 - (ii) Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

Transfer of assets of BO/LO/PO

Proposals for transfer of assets may be considered by the AD Category-I bank only from BOs/LOs/POs who are adhering to the operational guidelines such as submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation); have obtained PAN from IT Authorities and have got registered with ROC under the Companies Act 2013, if necessary. Also,

- (i) Transfer of assets by way of sale to the JV/WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their BO/LO/PO operations in India.
- (ii) A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price,

- depreciation till date, present book value or written down value (WDV) value and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.
- (iii) The assets should have been acquired by the BO/LO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included. No revenue expenses such as lease hold improvements incurred by the BO/LO can be capitalised and transferred to JV/WOS.
 - (iv) AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
 - (v) Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.
 - (vi) Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD category-I banks after satisfying itself about the bonafide of the transaction.

Checklist for BO/LO/PO

1.	Register with the Registrar of Companies (ROC)	A BO/LO/PO or any other place of business by whatever name called is required to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
2.	Application to an Authorised Dealer Category-I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profit making track record.
4.	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income

		Tax Authorities on setting up of their office in India and report the same in the AACs.
6.	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only who shall be responsible for the due diligence and KYC norms of the BO/LO/ PO. BO /LO/PO, present in multiple locations, are required to transact through their designated AD.
8.	Annual Activity Certificate(AAC)	The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
9.	BO/LO/PO change their existing AD Category-I bank	BO/LO/PO can change their existing AD Category-I bank subject to both the AD banks giving consent in writing for the transfer and the transferring AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.
10.	Acquisition of property by BO/PO	Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
11.	Carry out permitted/ incidental activities from leased property	As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/ LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.
12.	Term Deposit Account	AD Category-I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO/PO of a person

		resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO/LO/PO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.
13	The foreign entities who may have established LO or BO in the pre-FEMA period	In case a BO/LO has been established and continues to exist without approval of the Reserve Bank, such BO/LO may approach their AD Category-I bank to regularise their offices under FEMA 1999, even if permission of Reserve Bank was not required as per the regulations existing at the time of setting up of the office. Such cases may be brought to the notice of Reserve Bank immediately for allotment of UIN. The foreign entities who may have established LO or BO with the permission from the Government of India in the pre-FEMA period shall also approach their AD Category-I bank with a copy of the said approval for allotment of a UIN by the Reserve Bank.
14	Change in the name of the existing LO/BO	Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and if the application to this effect is received with the Board resolution for change of name and documents/certificate from ROC India showing change of name. The change in name of the BO/LO should be reported to FED, CO Cell, New Delhi. Where change in name is requested on account of acquisitions or mergers of foreign entities involving change in ownership, the acquired entity or new entity is required to apply afresh by closing the existing entity. Foreign entities should note that the approvals are given by the Reserve Bank/AD Category-I bank after detailed scrutiny as per laid down guidelines and FDI policies and hence the approvals given to one foreign entity is not transferrable to another foreign entity.

15.	Change in the Top Management	Change in the Top Management or CEO/ MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.
16.	Closure of the Branch office/ Liaison office	Requests for closure of the branch office/ liaison office may be submitted to the Authorised Dealer Category - I bank along with the copy of the Reserve Bank's/ Authorised Dealer Category-I bank's approval for establishing the office; Auditor's certificate; Confirmation from the applicant/ parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance; A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India and any other document/s specified by the Reserve Bank/Authorised Dealer Category-I bank while granting approval.
17.	Remittance of winding up proceeds	Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

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LIBERALISED REMITTANCE SCHEME (LRS)

As a liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both Reserve Bank of India also issues "Liberalised Remittance Scheme.

Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions. During the period from February 4, 2004 till date, the LRS limit has been revised as under:

(Amount in USD)

	Feb 4, 2004	Dec 20, 2006	May 8, 2007	Sep 26, 2007	Aug 14 2013	Aug 14, 2014	May 26, 2015
LRS limit (USD)	25,000	50,000	1,00,000	2,00,000	75,000	1,25,000	2,50,000

The Scheme is available to all resident individuals including minors. In case of remitter being a minor, the Form A2 must be countersigned by the minor's natural guardian.

Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/property. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the Scheme.

The permissible capital account transactions by an individual under LRS

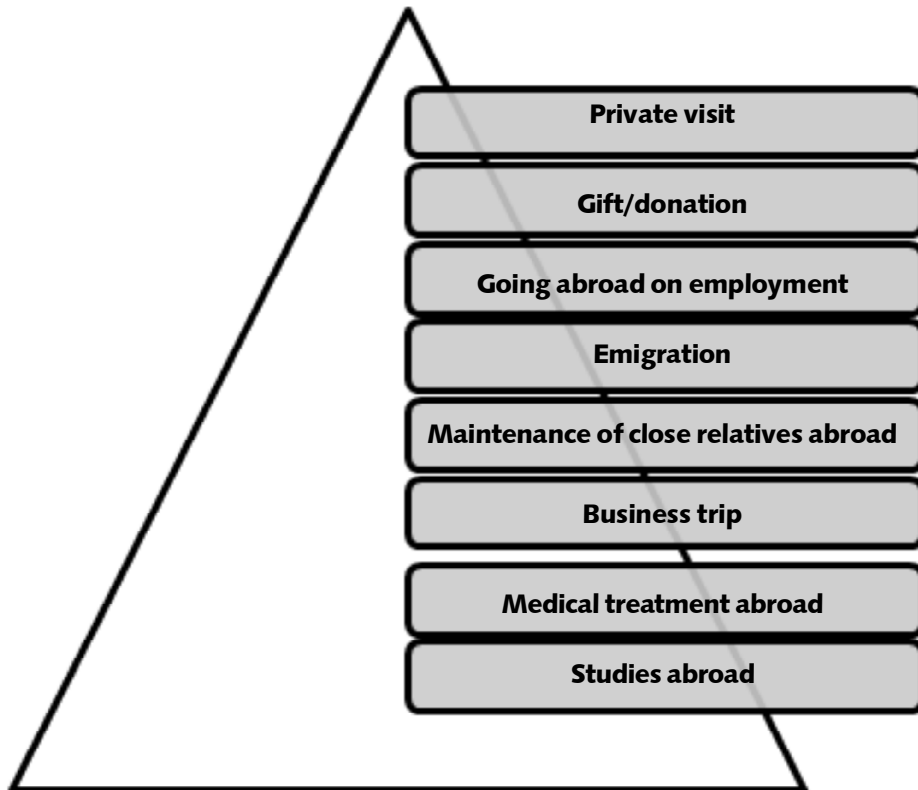
opening of foreign currency account abroad with a bank;

- purchase of property abroad;
- making investments abroad- acquisition and holding shares of both listed and unlisted overseas company or debt instruments;

- acquisition of qualification shares of an overseas company for holding the post of Director; acquisition of shares of a foreign company towards professional services rendered or in lieu of Director's remuneration;
- investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;
- setting up Wholly Owned Subsidiaries and Joint Ventures (with effect from August 05, 2013) outside India for bonafide business subject to the stipulated terms & conditions
- extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 1956.

The permissible Current Account Transactions by an individual under LRS

The limit of USD 2, 50,000 per Financial Year (FY) under the Scheme also includes/ subsumes remittances for current account transactions such as:



Release of foreign exchange exceeding USD 2,50,000, requires prior permission from the Reserve Bank of India.

a. *Private visits*

For private visits abroad, other than to Nepal and Bhutan, any resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year.

Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveller.

b. *Gift/donation*

Any resident individual may remit up-to USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.

c. *Going abroad on employment*

A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per FY from any Authorised Dealer in India.

d. *Emigration*

A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.

e. *Maintenance of close relatives abroad*

A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of close relatives ['relative' as defined in Section 6 of the Indian Companies Act, 1956] abroad.

f. *Business trip*

Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a FY irrespective of the number of visits undertaken during the year.

However, if an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafides of the transaction.

g. *Medical treatment abroad*

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.

In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.

h. *Facilities available to students for pursuing their studies abroad*

AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

Documentation by the remitter

- The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The resident individual seeking to make the remittance should furnish Form A2 for purchase of foreign exchange under LRS.
- It is mandatory to have PAN card to make remittances under the Scheme for capital account transactions. However, PAN card need not be insisted upon for remittances made towards permissible current account transactions up to USD 25,000.
- Investor who has remitted funds under LRS can retain, reinvest the income earned on the investments. At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme. However, a resident individual who has made overseas direct investment in the equity shares; compulsorily convertible preference shares of a JV/WoS outside India or ESOPs, within the LRS limit, shall have to comply with the terms and conditions prescribed by the overseas investment guidelines under Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2013.

REMITTANCE FACILITIES TO PERSONS OTHER THAN INDIVIDUALS

Gift/donation

General permission is available to persons other than individuals to remit towards donations

up-to one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for

- (a) creation of Chairs in reputed educational institutes,
- (b) contribution to funds (not being an investment fund) promoted by educational institutes; and
- (c) contribution to a technical institution or body or association in the field of activity of the donor Company.

Any additional remittance in excess of the same shall require prior approval of the Reserve Bank of India.

Procedure of remittance

Applications for remittances for purposes other than those specified above may be forwarded to the Reserve Bank of India together with

- (a) details of their foreign exchange earnings during the last 3 years,
- (b) brief background of the company's activities,
- (c) purpose of the donation and (d) likely benefits to the corporate.

Commission to agents abroad for sale of residential flats or commercial plots in India

Remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if commission per transaction to agents abroad for sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more.

Remittances towards consultancy services

Remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if remittances exceed USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Remittances towards re-imburement of pre-incorporation expenses

Remittances by persons other than individuals shall require prior approval of the Reserve Bank of India for remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Payment of fees in foreign currency - Embassy affiliated educational institutions

Authorised Dealers may sell foreign exchange towards payment of fees to schools/ educational institutions under the administrative control of foreign embassies.

Remittance towards payments of collected subscription to overseas TV media company

Authorised dealers may allow cable operators or collection agents in India of overseas

TV media companies, to remit subscription collected from subscribers in India/ advertisement charges collected from the advertisers who are eligible to advertise on overseas TV channels without any prior permission from the Reserve Bank.

Bids in foreign currency for projects to be executed in India

Persons resident in India are permitted to incur liability in foreign exchange and to make or to receive payments in foreign exchange, in respect of global bids where the Central Government has authorised such projects to be executed in India.

In such cases, authorised dealers may sell foreign exchange to the concerned resident Indian company which has been awarded the contract.

Sale of overseas telephone cards

Authorised Dealers may allow agents in India of the overseas organisations issuing pre-paid telephone cards to remit the sale proceeds of such cards, net of their commission, to the issuers of the telephone cards.

Liberalization of foreign technical collaboration agreements

AD Category-I banks may permit drawal of foreign exchange by persons for payment of royalty and lump-sum payment under technical collaboration agreements without the approval of Ministry of Commerce and Industry, Government of India.

Drawal of foreign exchange for remittance for purchase of trademark or franchise in India

AD Category-I banks may permit drawal of foreign exchange by person for purchase of trademark or franchise in India without approval of the Reserve Bank.

Remittances for making tour arrangements by agents

Authorised Dealers may effect remittances at the request of agents in India who have tie-up arrangements with hotels/ agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travel from India, provided the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the traveller concerned from an Authorised Person (including exchange drawn for private travel abroad) in accordance with the Rules, Regulations and Direction in force.

- Authorised Dealer may open foreign currency accounts in the name of agents in India who have tie up arrangements with hotels/ agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travellers from India provided:-
 - (i) the credits to the account are by way of depositing :-
 - a. collections made in foreign exchange from travellers; and
 - b. refunds received from outside India on account of cancellation of bookings / tour arrangements, etc., and
 - (ii) the debits in foreign exchange are for making payments towards hotel accommodation, tour arrangements etc. outside India.

- Authorised Dealer may allow tour operators to remit the cost of rail/ road/ water/transportation charges outside India without any prior approval from the Reserve Bank, net of commission/ mark up due to the agent. The sale of passes/ ticket in India can be made either against the payment in Indian Rupees or in foreign exchange released for visits abroad.
- In respect of consolidated tours arranged by travel agents in India for foreign tourists visiting India and neighbouring countries like Nepal, Bangladesh, Sri Lanka etc. against advance payments/ reimbursement through an Authorised Dealer, part of the foreign exchange received in India against such consolidated tour arrangement, may require to be remitted from India to these neighbouring countries for services rendered by travel agents and hoteliers in these countries. Authorised Dealer may allow such remittances after verifying that the amount being remitted to the neighbouring countries (inclusive of remittances, if any, already made against the tour) does not exceed the amount actually remitted to India and the country of residence of the beneficiary is not Pakistan.

Prohibited Transactions

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

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REMITTANCE OF ASSETS OUTSIDE INDIA

Remittance outside India by a person whether resident in India or not, of assets in India, governed under the Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

'Remittance of assets' means remittance outside India of funds in a deposit with a bank/ firm/ company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Foreign Exchange Management Act, 1999 (FEMA) or rules/ regulations made under FEMA.

Remittances by individuals not being NRIs/ PIOs

Authorised Dealer may allow remittance of assets by a foreign national where:

- (i) the person has retired from employment in India;
- (ii) the person has inherited from a person referred to in section 6(5) of the Act;
- (iii) the person is a non-resident widow/widower and has inherited assets from her/his deceased spouse who was an Indian national resident in India.

The remittance should not exceed USD one million per financial year. This limit, however, will not cover sale proceeds of assets held on repatriation basis. In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD on submission of documentary evidence.

- (iv) the remittance is in respect of balances held in a bank account by a foreign student who has completed his/ her studies, provided such balance represents proceeds of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any organisation in India.

These facilities are not available for citizens of Nepal or Bhutan or a PIO.

Remittances by NRIs/ PIOs

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

A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen

of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- a. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- b. Who belonged to a territory that became part of India after the 15th day of August, 1947; or
- c. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- d. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c).

PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

Authorised Dealer may allow NRIs/ PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year:

- (i) out of balances in their non-resident (ordinary) (NRO) accounts/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;
- (ii) in respect of assets acquired under a deed of settlement made by either of his/ her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler;
- (iii) in case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account;

In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same Authorised Dealer. Where the remittance is to be made from the balances held in the NRO account, the Authorised Dealer should obtain an undertaking from the account holder stating that the said remittance is sought to be made out of the remitter's balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA.

Remittances by companies/ entities

Authorised Dealers may allow remittances by Indian companies under liquidation on directions issued by a Court in India/ orders issued by official liquidator in case of voluntary winding up on submission of:

- a. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- b. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.

- c. 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.

Authorised Dealers may also allow Indian entities to remit their contribution towards the provident fund/ superannuation/ pension fund in respect of their expatriate staff resident but "not permanently resident" in India.

Remittances/Winding up proceeds of Branch Office/ Liaison Office

Authorised Dealer may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) on submission of the following documents:

- (i) A copy of the Reserve Bank's permission for establishing the branch office / liaison office in India.
- (ii) Auditor's certificate:
 - a. indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
 - b. confirming that all liabilities in India including arrears of gratuity and other benefits to the employees etc., of the branch office / liaison office have been either fully met or adequately provided for;
 - c. confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India;
 - d. confirming that the branch office / liaison office has complied with all regulatory requirements stipulated by the Reserve Bank of India from time to time regarding functioning of such offices in India;
- (iii) a confirmation from the applicant that no legal proceedings are pending in any Court in India and there is no legal impediment to the remittance; and
- (iv) a report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the office in India.

Remittance of assets requiring RBI approval

Prior approval of the Reserve Bank is necessary for remittance of assets where:

- a. Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year
 - (i) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;
 - (ii) by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

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- b. Hardship will be caused to a person if remittance from India is not made to such a person.

Remittance of funds from the sale of assets in India held by a person, whether resident in or outside India, not covered under the directions stipulated above will require approval of the Reserve Bank.

Income-tax clearance

The remittances are subject to payment of applicable taxes in India. Reserve Bank of India will not issue any instructions under FEMA clarifying tax issues. It shall be mandatory on the part of Authorised Dealers to comply with the requirement of tax laws, as applicable.

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COMPOUNDING OF CONTRAVENTIONS UNDER FEMA

Introduction

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a), for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

Power to compound by Reserve Bank

<i>Amount</i>	<i>Compounding Authority</i>
In case where the sum involved in such contravention is ten lakhs rupees or below	Assistant General Manager of the Reserve Bank of India
In case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs	Deputy General Manager of Reserve Bank of India
In case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees hundred lakhs	General Manager of Reserve Bank of India
In case the sum involved in such contravention is rupees one hundred lakhs or more	Chief General Manager of the Reserve Bank of India

Delegation of Powers to Regional Offices

As a measure of customer service and in order to facilitate the operational convenience, compounding powers have been delegated to the Regional Offices of the Reserve Bank of India to compound the following contraventions of FEMA, 1999.

<i>Brief Description of Contravention</i>	<i>Compounding Authority</i>
Delay in reporting inward remittance received for issue of shares.	Regional Offices of the Reserve Bank of India
Delay in filing form FC(GPR) after issue of shares.	Regional Offices of the Reserve Bank of India
Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA Return), by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year	Regional Offices of the Reserve Bank of India
Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.	Regional Offices of the Reserve Bank of India
Violation of pricing guidelines for issue of shares.	Regional Offices of the Reserve Bank of India
Issue of ineligible instruments such as non - convertible debentures, partly paid shares, shares with optionality clause, etc.	Regional Offices of the Reserve Bank of India
Issue of shares without approval of RBI or FIPB respectively, wherever required.	Regional Offices of the Reserve Bank of India
Delay in submission of form FC -TRS on transfer of shares from Resident to Non-Resident.	Regional Offices of the Reserve Bank of India
Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.	Regional Offices of the Reserve Bank of India
Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.	Regional Offices of the Reserve Bank of India

<i>Brief Description of Contravention</i>	<i>Compounding Authority</i>
Contraventions relating to acquisition and transfer of immovable property outside India	FED, CO Cell, New Delhi
Contraventions relating to acquisition and transfer of immovable property in India	FED, CO Cell, New Delhi
Contraventions relating to establishment in India of Branch office, Liaison Office or Project office	FED, CO Cell, New Delhi
Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000	FED, CO Cell, New Delhi

Application for Compounding

- All applications for compounding may be submitted together with the prescribed fee of Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the concerned Regional Office and by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at Mumbai for cases submitted to the Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai.
- Along with the application in the prescribed format, the applicant may also furnish the details relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame.
- In case the application has to be returned where required approvals are not obtained from the authorities concerned or in case of incomplete application for any other reason, the application fees of Rs.5000/- received along with the application will be returned by crediting the same to the applicant's account through NEFT as per the ECS mandate and details of their bank account as furnished along with the application. The application will be treated as incomplete without these details.
- The applicants are also advised to bring to the notice of the compounding authority change, if any, in the address/ contact details of the applicant during the pendency of the compounding application with Reserve Bank.

Pre-requisite for Compounding Process

- In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded and relevant provisions of the FEMA, 1999 shall apply. 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.
- Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.
- Cases of contravention such as those having a money laundering angle, national security concerns and/or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999 or to the authority instituted for implementation of the Prevention of Money Laundering Act 2002, or to any other agencies, for necessary action as deemed fit.
- In this connection, it is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide
 - whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
 - whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or
- Whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

Scope and Procedure for Compounding

- On receipt of the application for compounding, the Reserve Bank shall examine the application based on the documents and submissions made in the application and assess whether contravention is quantifiable and, if so, the amount of contravention.
- The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. In case the contravener fails to submit the additional information/documents called for within the specified period, the application for compounding will be liable for rejection.

- The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded
- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- the amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

Issue of the Compounding Order

- The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings.
- The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.
- If the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions. Appearing for or opting out of personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order. If the authorized representative of the applicant is unavailable for the personal hearing, the Compounding Authority may pass the order based on available information/ documents.
- The Compounding Order shall specify the provisions of the FEMA, 1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999 in respect of which contravention has taken place along with details of the contravention.
- One copy of the compounding order issued under sub rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 shall be supplied to the applicant (the contravener) and also to the Adjudicating Authority, where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of the FEMA, as the case may be.
- To ensure more transparency and greater disclosure, it has been decided to host the compounding orders passed on the Reserve Bank's website (www.rbi.org.in).

FORM FC-GPR

(To be filed by the company through its Authorised Dealer Category – I bank with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company making the declaration is situated as and when shares/convertible debentures / others are issued to the foreign investor, along with the documents mentioned in item No. 5 of the undertaking enclosed to this form. All fields are mandatory).

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

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

2.	Description of the main business activity NIC Code	
	<p>Location of the project and NIC code for the district where the project is located</p> <p>(a) Detailed address including Name, City, District and State</p> <p>(b) Code for District</p> <p>(c) Code for State</p> <p>Percentage of FDI allowed as per FDI policy (Sectoral cap under FDI Policy)</p> <p>State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable) (If under approval route, give relevant approval No. with date)</p>	Automatic Route / Approval Route
3	Details of the foreign investor / collaborator ^{1*} (Details of foreign residence to be given. Indian address if any should not be given)	
	<p>Name</p> <p>Address</p> <p>Country</p> <p>Constitution / Nature of the investing Entity</p> <p>[Specify whether</p> <ol style="list-style-type: none"> 1. Individual 2. Company (Please specify if erstwhile OCB) 3. FII 4. FVCI[#] 5. Foreign Trust 6. Private Equity Fund 	

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

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

	7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF) ² 9. Partnership / Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)] Date of incorporation:	
4	Particulars of Shares / Convertible Debentures /others Issued	
(a)	Nature and date of issue	
	Nature of issue	Date of issue
		Number of shares/ convertible debentures/others
01	IPO / FPO	
02	Preferential allotment / private placement	
03	Rights	
04	Bonus	
05	Conversion of ECB	
06	Conversion of royalty (including lump sum payments)	
07	Conversion against import of capital goods by units in SEZ	
08	ESOPs	
09	Share Swap	
10	Others (please specify)	
	Total	

² SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

(b)	Type of security issued							
	No.	Nature of security	Number	Maturity	Face value	Premium	Issue Price per security	Amount of inflow*
	01	Equity						
	02	Compulsorily Convertible Debentures						
	03	Compulsorily Convertible Preference shares						
	04	Others (please specify)						
		Total						

i) In case the issue price is greater than the face value please give break up of the premium received.

ii)* In case the issue is against conversion of ECB or royalty or against import of capital goods by units in SEZ, a Chartered Accountant's Certificate certifying the amount outstanding on the date of conversion

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

@ Please specify the nature

(d)	Total inflow (in Rupees) on account of issue of shares / convertible debentures/others to non-residents (including premium, if any) vide	
	(i) Remittance through AD: (ii) Debit to NRE/FCNR/Escrow A/c with Bank _____ (iii) Others (please specify) Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Schedule I to Notification No. FEMA 20 /2000-RB dated May 3, 2000, as amended from time to time.	

(e)	Disclosure of fair value of shares issued**	
	We are a listed company and the market value of a share as on date of the issue is*	
	We are an un-listed company and the fair value of a share is*	

** before issue of shares

*(Please indicate as applicable)

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

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

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

We hereby declare that:

1. We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.
2. The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfil all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).
 - (a) Shares issued on rights basis to non-residents are in conformity with Regulation 6 of the RBI Notification No FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

OR
 - (b) Shares issued are bonus.

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

OR
 - (d) Shares are issued under ESOP and the conditions regarding this issue have been satisfied
3. Shares have been issued in terms of Government approval No. _____ dated _____
4. The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations
5. We enclose the following documents in compliance with Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:
 - (i) A certificate from our Company Secretary certifying that
 - (a) all the requirements of the Companies Act, 1956 have been complied with;
 - (b) terms and conditions of the Government approval, if any, have been complied with;
 - (c) the company is eligible to issue shares under these Regulations; and
 - (d) the company has all original certificates issued by authorised dealers

in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

6. Unique Identification Numbers given for all the remittances received as consideration for issue of shares/ convertible debentures/others (details as above), by Reserve Bank.

R																			
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R																			
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(Signature of the Applicant)* : _____

(Name in Block Letters) : _____

(Designation of the signatory) : _____

Place:

Date:

(* To be signed by Managing Director/Director/Secretary of the Company)

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY³ OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT

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

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

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

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

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FC-GPR:

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

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

Appendix- II

FNC*Application for Establishment of Branch/Liaison Office in India***I. General Instructions to Applicants:**

The application form shall be completed and submitted to the AD Category - I bank designated by the applicant for onward transmission to the Chief General Manager-in -Charge, Reserve Bank, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400001 along with the documents mentioned in item (viii) of the Declaration.

<i>No.</i>	<i>Details</i>	<i>Particulars</i>
1.	Full name and address of the applicant. Date and Place of incorporation / registration Telephone Number(s) Fax Number(s) E-mail ID	
2.	Details of capital <ul style="list-style-type: none"> • Paid-up capital • Free Reserves/Retained earnings as per last audited Balance Sheet/Financial Statement • Intangible assets, if any 	
3.	Brief description of the activities of the applicant.	
4.	<ul style="list-style-type: none"> i) Value of goods imported from and / or exported to India by the applicant during each of the last three years: a) Imports from India; b) Exports to India ii) Particulars of existing arrangements if any, for representing the company in India. iii) Particulars of the proposed Liaison/ Branch Office: <ul style="list-style-type: none"> a) Details of the activities/ services proposed to be undertaken/ rendered by the office. b) Place where the office will be located. c) Phone number d) E-mail ID 	

<i>No.</i>	<i>Details</i>	<i>Particulars</i>
	e) Expected number of employees (with number of foreigners)	
5.	<ul style="list-style-type: none"> • Name and address of the banker of the applicant in the home country • Telephone & Fax Number • E-mail ID 	
6.	Any other information which the applicant company wishes to furnish in support of this application.	
7.	<p>For Non-profit / Non-Government Organisations:</p> <ul style="list-style-type: none"> (i) Details of activities carried out in the host country and other countries by the applicant organization. (ii) Expected level of funding for operations in India. (iii) Copies of the bye-laws, Articles of Association of the organisation. 	

DECLARATION

We hereby declare that:

- (i) The particulars given above are true and correct to the best of our knowledge and belief.
- (ii) Our activities in India would be confined to the activities indicated in column 4(iii) (a) above.
- (iii) If we shift the office to another place within the city, we shall intimate the designated AD Category - I bank and the Reserve Bank. In the event of shifting the Office to any other city in India, prior approval of the Reserve Bank will be obtained.
- (iv) We will abide by the terms and conditions that may be stipulated by the Government of India / Reserve Bank / designated AD Category - I bank from time to time.
- (v) We, hereby commit that we are agreeable to a report / opinion sought from our bankers abroad by the Government of India / Reserve Bank.
- (vi) We understand that the approval, if granted, is from FEMA angle only. Any other approvals / clearances, statutory or otherwise, required from any other

Government Authority/ Department/ Ministry will be obtained before commencement of operations in India.

(vii) We have no objection to the Reserve Bank placing the details of approval in public domain.

(viii) We enclose the following documents:

a. 1. Copy of the Certificate of Incorporation / Registration attested by the Notary Public in the country of registration

[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].

b. 2. Latest Audited Balance sheet of the applicant company.

[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted]

1. Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

(Signature of Authorised Official of the Applicant Company)

Name:

Designation:

Place:

Date:

*Appendix- III***Annual Activity Certificate**

(To be submitted as on March 31,.....on or before April 30,.....).

To whomsoever it May Concern

This is to certify and confirm that during the period from _____ to _____, the Branch/Liaison Office/s with PAN No. _____ of M/s _____ (UIN-) has/ have undertaken only those activities that have been specifically permitted by the Reserve Bank vide its approval letter/s No/s. _____ dated _____ and has/have complied with the terms and conditions specified in the above mentioned letter/s.

(Signature of the Auditor/s)

(Name of the Chartered Accountant)

ICAI Membership No.:

Address:

Place:

Date:

Appendix- IV

**FACT SHEET ON FOREIGN DIRECT INVESTMENT (FDI)
FROM APRIL, 2000 to MARCH, 2017**

(up dated up to March, 2017)

CUMULATIVE FDI FLOWS INTO INDIA (2000-2017):**A. TOTAL FDI INFLOWS (from April, 2000 to March, 2017):**

1. CUMULATIVE AMOUNT OF FDI INFLOWS (Equity inflows + 'Re-invested earnings' + 'Other capital')	-	US\$ 484,351 Million
2. CUMULATIVE AMOUNT OF FDI EQUITY INFLOWS (excluding, amount remitted through RBI's NRI Schemes)	Rs. 1,787,022 Crore	US\$ 331,991 Million

B. FDI INFLOWS DURING FOURTH QUARTER OF FINANCIAL YEAR 2016-17 (JANUARY, 2017 TO MARCH, 2017):

1. TOTAL FDI INFLOWS INTO INDIA (Equity inflows + 'Re-invested earnings' + 'Other capital') (as per RBI's Monthly bulletins)	-	US\$ 12,194 Million
2. FDI EQUITY INFLOWS	Rs. 51,311 Crore	US\$ 7,634 Million

C. FDI EQUITY INFLOWS (MONTH-WISE) DURING THE FINANCIAL YEAR 2016-17:

	<i>Financial Year 2016-17 (April-March)</i>	<i>Amount of FDI (In Rs. Crore)</i>	<i>Equity inflows (In US\$ mn)</i>
1.	April, 2016	22,345	3,362
2.	May, 2016	13,271	1,983
3.	June, 2016	15,111	2,245
4.	July, 2016	27,430	4,081
5.	August, 2016	32,150	4,803
6.	September, 2016	34,366	5,149
7.	October, 2016	41,353	6,195

	<i>Financial Year 2016-17 (April-March)</i>	<i>Amount of FDI (In Rs. Crore)</i>	<i>Equity inflows (In US\$ mn)</i>
8.	November, 2016	31,631	4,677
9.	December, 2016	22,727	3,347
10	January, 2017	27,067	3,976
11	February, 2017	8,118	1,210
12	March, 2017	16,126	2,448
	2016-17 (From April, 2016 to March, 2017) #	291,696	43,478
	2015-16 (form April, 2015 to March, 2016) #	262,322	40,001
	% age growth over last year	(+)11%	(+)9%

D. FDI EQUITY INFLOWS (MONTH-WISE) DURING THE CALENDAR YEAR 2017:

	<i>Calendar Year 2017 (Jan.-Dec.)</i>	<i>Amount of FDI Equity inflows</i>	
		<i>(In Rs. Crore)</i>	<i>(In US\$ mn)</i>
1.	January, 2017	27,067	3,976
2.	February, 2017	8,118	1,210
3.	March, 2017	16,126	2,448
	Year 2017 (up to March, 2017) #	51,311	7,634
	Year 2016 (up to March, 2016) #	71,259	10,559
	% age growth over last year	(-)28%	(-)28%

Note: (i) Country & Sector specific analysis is available from the year 2000 onwards, as Company-wise details are provided by RBI from April, 2000 onwards only.

Figures are provisional, subject to reconciliation with RBI, Mumbai.

E. SHARE OF TOP INVESTING COUNTRIES FDI EQUITY INFLOWS (Financial years):*Amount Rupees in Crores (US\$ in Million)*

<i>Ranks</i>	<i>2014-15 (April- March)</i>	<i>2015-16 (April – March)</i>	<i>2016-17 (April – March)</i>	<i>2014-15 (April – March)</i>	<i>Cumulative Inflows (April,2000 - March, 17)</i>	<i>%age to total Inflows (in terms of US \$)</i>
1. MAURITIUS	55,172 (9,030)	54,706 (8,355)	105,587 (15,728)	585,950 (111,638)	34%	
2. SINGAPORE	41,350 (6,742)	89,510 (13,692)	58,376 (8,711)	315,042 (54,590)	16 %	
3. JAPAN	12,752 (2,084)	17,275 (2,614)	31,588 (4,709)	142,260 (25,675)	8%	
4. U.K.	8,769 (1,447)	5,938 (898)	9,953 (1,483)	125,545 (24,591)	7 %	
5. NETHERLANDS	20,960 (3,436)	17,275 (2,643)	22,633 (3,367)	117,167 (20,682)	6 %	
6. U.S.A.	11,150 (1,824)	27,695 (4,192)	15,957 (2,379)	110,532 (20,323)	6 %	
7. GERMANY	6,904 (1,125)	6,361 (986)	7,175 (1,069)	52,045 (9,698)	3 %	
8. CYPRUS	3,634 (598)	3,317 (508)	4,050 (604)	46,731 (9,156)	3 %	
9. FRANCE	3,881 (635)	3,937 (598)	4,112 (614)	30,637 (5,725)	2 %	
10. UAE	2,251 (367)	6,528 (985)	4,539 (675)	26,187 (4,705)	1 %	
TOTAL FDI INFLOW FROM ALL COUNTRIES *	189,107 (30,931)	262,322 (40,001)	291,696 (43,478)	1,787,555 (332,112)	-	

*Includes inflows under NRI Schemes of RBI.

Note: (i) Cumulative country-wise FDI equity inflows (from April, 2000 to March, 2017) are at – Annex-'A'.

(ii) %age worked out in US\$ terms & FDI inflows received through FIPB/SIA+ RBI's Automatic Route + acquisition of existing shares only.

F SECTORS ATTRACTING HIGHEST FDI EQUITY INFLOWS:*Amount in Rs. Crores (US\$ in Million)*

<i>Ranks</i>	<i>Sector</i>	<i>2014-15 (April- March)</i>	<i>2015-16 (April – March)</i>	<i>2016-17 (April – March)</i>	<i>Cumulative Inflows (April, 20000 - March, 17)</i>	<i>%age to total Inflows (in terms of US \$)</i>
1.	SERVICES SECTOR **	27,369 (4,443)	45,415 (6,889)	58,214 (8,684)	316,568 (59,476)	18 %
2.	COMPUTER SOFTWARE & HARDWARE	14,162 (2,296)	38,351 (5,904)	24,605 (3,652)	136,789 (24,669)	7 %
3.	CONSTRUC- TION DEVE- LOPMENT TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUC- TURE	4,652 (769)	727 (113)	703 (105)	114,639 (24,293)	7 %
4.	TELE- COMMUNI- CATIONS (radio paging, cellular mobile, basic telephone services)	17,372 (2,895)	8,637 (1,324)	37,435 (5,564)	130,164 (23,946)	7 %
5.	AUTOMOBILE INDUSTRY	16,760 (2,726)	16,437 (2,527)	10,824 (1,609)	92,218 (16,674)	5 %
6.	DRUGS & PHARMACEU- TICALS	9,052 (1,498)	4,975 (754)	5,723 (857)	75,820 (14,707)	4 %

<i>Ranks</i>	<i>Sector</i>	<i>2014-15 (April- March)</i>	<i>2015-16 (April – March)</i>	<i>2016-17 (April – March)</i>	<i>Cumulative Inflows (April, 00 - March, 17)</i>	<i>%age to total Inflows (in terms of US \$)</i>
7.	TRADING	16,755 (2,728)	25,244 (3,845)	15,721 (2,338)	84,557 (14,211)	4 %
8.	CHEMICALS (OTHER THAN FERTILIZERS)	4,658 (763)	9,664 (1,470)	9,397 (1,393)	68,952 (13,293)	4 %
9.	POWER	4,296 (707)	5,662 (869)	7,473 (1,113)	60,087 (11,589)	3 %
10.	METALLUR- GICAL INDUSTRIES	2,196 (359)	2,982 (456)	9,647 (1,440)	53,074 (10,331)	3 %

- Note: (i) ** Services sector includes Financial, Banking, Insurance, Non-Financial / Business, Outsourcing, R&D, Courier, Tech. Testing and Analysis
- (ii) FDI Sectoral data has been revalidated / reconciled in line with the RBI, which reflects minor changes in the FDI figures (increase/decrease) as compared to the earlier published sectoral data.

Abbreviations

AAC	:	Annual Activity Certificate
AD	:	Authorised Dealer
ADR	:	American Depository Receipt
AIFs	:	Alternative Investment Funds
AOA	:	Article of Association
ARC	:	Asset Reconstruction Company
BO	:	Branch Office
BTQ	:	Basic Travel Quota
B2B	:	Business to Business
B2C	:	Business to Consumer
CAC	:	Capital Account Convertibility
CBI	:	Central Bureau of Investigation
CEO	:	Chief Executive Officer
CEFA	:	Cell for Effective implementation of FEMA
CMD	:	Chief Managing Director
CPA	:	Certified Public Accountant
DBR	:	Department of Banking Regulation
DIN	:	Director Identification Number
DIPP	:	Department of Industrial Policy and Promotion
DOE	:	Department of Energy
DR	:	Depository Receipt
DSIM	:	Department of Statistics and Information Management
ECB	:	External Commercial Borrowings
EODB	:	Ease of Doing Business
EOUs	:	Export Oriented Units
ESOPS	:	Employees Stock Option Scheme
FCCB	:	Foreign Currency Convertible Bond
FC-GPR	:	Foreign Currency - General Purchase Register
FCNR	:	Foreign Currency Non-Repatriable Account

FC-TRS	:	Foreign Currency- Transfer of Shares
FDI	:	Foreign Direct Investment
FED	:	Foreign Exchange Department
FEMA	:	Foreign Exchange Management Act
FERA	:	Foreign Exchange Regulation Act
FII	:	Foreign Institutional Investor
FPI	:	Foreign Portfolio Investor
FRRO	:	Foreigners Regional Registration Office
FVCI	:	Foreign Venture Capital Investor
FY	:	Financial Year
GDP	:	Gross Domestic Product
GDR	:	Global Depository Receipt
GMPCS	:	Global Mobile Personal Communications Services
GST	:	Goods and Services Tax
HUF	:	Hindu Undivided Family
InvIts	:	Infrastructure Investment Trusts
ICDR	:	Issue of Capital and Disclosure Requirements
IEC	:	Import Export Code
IEM	:	Industrial Entrepreneur's Memorandum
IPO	:	Initial Public Offer
IVCU	:	Indian Venture Capital Undertaking
JV	:	Joint Venture
KYC	:	Know Your Customer
LIBOR	:	London Interbank Offered Rate
LLP	:	Limited Liability Partnership
LO	:	Liaison Office
LOC	:	Letter of Comfort
LRN	:	Loan Registration Number
LRS	:	Liberalised Remittance Scheme
MD	:	Managing Director

MII	:	Make in India Initiative
MOA	:	Memorandum of Association
MRTTP	:	Monopolies and Restrictive Trade Practices
M-SIPS	:	Modified Special Incentive Package Scheme
NIMZ	:	National Investment & Manufacturing Zones
NGO	:	Non-Profit Organisation
NOC	:	No Objection Certificate
NRE	:	Non Resident Rupee Account
NRI	:	Non-Resident Indian
NRO	:	Non-Residential Ordinary account
OCB	:	Erstwhile Overseas Corporate Body
OECD	:	Organisation for Economic Co-operation and Development
PAN	:	Permanent Account Number
PFRDA	:	Pension Fund Regulatory and Development Authority
PIO	:	Person of Indian Origin
PMRTS	:	Public Mobile Radio Trunked Services
PO	:	Project Office
PRI	:	Person Resident in India
RBI	:	Reserve Bank of India
RFPI	:	Registered Foreign Portfolio Investor
ROC	:	Registrar of Companies
SARFAESI Act	:	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act
SAST	:	Substantial Acquisition of Shares and Takeovers
SEBI	:	Securities and Exchange Board of India
SEZ	:	Special Economic Zones
SIA	:	Secretariat of Industrial Assistance
SRs	:	Security Receipts
TAN	:	Tax Deduction Account Number

TDR	:	Transferable Development Rights
UIN	:	Unique Identification Number
UT	:	Union Territory
VCF	:	Venture Capital Fund
WDV	:	Written Down Value
WoS	:	Wholly owned Subsidiary

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