

**Department of Industrial Policy and  
Promotion**

**Ministry of Commerce and Industry**

**Government of India**

**CONSOLIDATED FDI POLICY**

**(EFFECTIVE FROM APRIL 1, 2010)**

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

**CIRCULAR 1 OF 2010**

**SUBJECT: CONSOLIDATED FDI POLICY.**

The “Consolidated FDI Policy” is attached.

2. This circular will take effect from April 1, 2010.

(Gopal Krishna)  
Joint Secretary to the Government of India

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D/o IPP F. No. 5(14)/2009-FC Dated 31.03.2010

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## **CHAPTER 1: INTENT AND OBJECTIVE**

### **1.1 INTENT AND OBJECTIVE**

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

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

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

1.1.4 **The Legal basis:** Foreign Direct Investment by non-resident in resident entities through transfer or issue of security to person resident outside India is a ‘Capital account transaction’ and Government of India and Reserve Bank of India regulate this under the FEMA, 1999 and its various regulations. Keeping in view the current requirements, the Government from time to time comes up with new regulations and amendments/changes in the existing ones through order/allied rules, Press Notes, etc. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce &

Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendment to notification No.FEMA 20/2000-RB dated May 3, 2000. These notifications take effect from the date of issue of Press Notes/ Press Releases. The procedural instructions are issued by the Reserve Bank of India vide A.P.Dir. (series) Circulars. The regulatory framework over a period of time thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.5 This circular consolidates into one document all the prior policies/regulations on FDI which are contained in FEMA, 1999, RBI Regulations under FEMA, 1999 and Press Notes/Press Releases/Clarifications issued by DIPP and reflects the current 'policy framework' on FDI. It is clarified that this is a consolidation/compilation and comprehensive listing of most matters on FDI and is not intended to make changes in the extant regulations. This Consolidation deals comprehensively with all aspects of FDI Policy which are covered under the various Press Notes/Press Releases/ Clarifications issued by DIPP.

1.1.6 It has been decided that from now onwards a consolidated circular would be issued every six months to update the FDI policy. This consolidated circular will, therefore, be superseded by a circular to be issued on September 30, 2010.

1.1.7 All earlier Press Notes/Press Releases/Clarifications on FDI issued by DIPP which were in force and effective as on March 31, 2010 stand rescinded as on March 31, 2010. The present circular consolidates and subsumes all such/these Press Notes/Press Releases/Clarifications as on March 31, 2010.

1.1.8 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications prior to March 31, 2010 shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

1.1.9 It is the intent and objective of the Government to promote foreign direct investment through a policy framework which is transparent, predictable, simple and clear and reduces regulatory burden. The system of periodic consolidation and updation is introduced as an investor friendly measure. While this circular consolidates FDI Policy Framework, the legal edifice is built on

notifications issued by RBI under FEMA. Therefore, any changes notified by RBI from time to time would have to be complied with and where there is a need / scope of interpretation, the relevant FEMA notification will prevail.

1.1.10 This circular will take effect from April 1, 2010.

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## **CHAPTER 2: DEFINITIONS**

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

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

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

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

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

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

Note : Any other type of instruments like warrants, partly paid shares etc. are not considered as capital and cannot be issued to person resident outside India.

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

2.1.7 A company is considered as "Controlled" by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company .

2.1.8 An entity is considered as 'Controlled' by 'non resident entities', if non-residents have the power to appoint a majority of its directors

2.1.9 'Depository Receipt' (DR) means a negotiable security issued outside India by a

Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs).

- 2.1.10 'Erstwhile Overseas Corporate Body' (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indian and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indian directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs) ) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.
- 2.1.11 'Foreign Currency Convertible Bonds'(FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.
- 2.1.12 'FDI' means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM(Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.
- 2.1.13 'FEMA' means the Foreign Exchange Management Act 1999 (42 of 1999).
- 2.1.14 'FIPB' means the Foreign Investment Promotion Board constituted by the Government of India.
- 2.1.15 'Foreign Institutional Investor'(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a

FII in accordance with the SEBI (FII) Regulations 1995.

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

- 2.1.26 A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;
- 2.1.27 An entity is considered as 'Owned' by 'non resident entities', if more than 50% of the capital in it is beneficially owned by non-residents.
- 2.1.28 'PAB' means Project Approval Board in DIPP, Ministry of Commerce & Industry, Government of India.
- 2.1.29 'Person' includes
- (i) an individual
  - (ii) a Hindu undivided family,
  - (iii) a company
  - (iv) a firm
  - (v) an association of persons or a body of individuals whether incorporated or not,
  - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
  - (vii) any agency, office, or branch owned or controlled by such person.
- 2.1.30 'Person of Indian Origin' (PIO) means a citizen of any country other than Bangladesh or Pakistan, if
- (i) he at any time held Indian Passport
  - (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);  
or
  - (iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).
- 2.1.31 'Person resident in India' means -
- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –

- (A) A person who has gone out of India or who stays outside India, in either case-
  - (a) for or on taking up employment outside India, or
  - (b) for carrying on outside India a business or vocation outside India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) A person who has come to or stays in India, in either case, otherwise than-
  - (a) for or on taking up employment in India; or
  - (b) for carrying on in India a business or vocation in India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

- 2.1.32 'Person resident outside India' means a person who is not a Person resident in India.
- 2.1.33 'RBI' means the Reserve Bank of India established under the Reserve Bank of India Act, 1934.
- 2.1.34 'Resident Entity' means 'Person resident in India' excluding an individual.
- 2.1.35 'Resident Indian Citizen' shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.
- 2.1.36 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.
- 2.1.37 'SEZ' means a Special Economic Zone as defined in Special Economic Zone Act, 2005.
- 2.1.38 'SIA' means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.
- 2.1.39 'Transferable Development Rights' (TDR) means certificates issued in respect of

category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

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

- (i) has a dedicated pool of capital;
- (ii) raised in the manner specified under the Regulations; and
- (iii) invests in accordance with the Regulations

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

### **3.1 ORIGIN OF INVESTMENT IN INDIA**

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

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

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

3.1.4 (i) An FII may invest in the capital of an Indian company either under the FDI Scheme/Policy or the Portfolio Investment Scheme. 10% individual limit and 24% aggregate limit for FII investment would still be applicable even when FIIs invest under the FDI scheme/policy.

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

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

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

3.1.6 A Foreign Venture Capital Investor (FVCI) may contribute upto 100% of the capital of a Venture Capital Fund/Indian Venture Capital Undertaking and may also set up a domestic asset

management company to manage the fund. All such investments are allowed under the automatic route subject to SEBI & RBI regulations and FDI Policy. However FVCIs are also allowed to invest as non-resident entities in other companies subject to FDI Policy.

### 3.2 **TYPES OF INSTRUMENTS.**

3.2.1 Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations. The pricing of the capital instruments should be decided/determined upfront at the time of issue of the instruments.

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

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

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

- (i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR(ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.
- (ii) A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.
- (iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on

making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. ADRs / GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilization of the proceeds, the Indian company can invest the funds in:-

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

Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

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

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

### 3.3 **ELIGIBILITY OF FDI IN RESIDENT ENTITIES**

#### 3.3.1 **FDI in an Indian Company**

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

#### 3.3.2 **FDI in Partnership Firm / Proprietary Concern:**

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

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

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

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

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

(iii) **Investment by non-residents other than NRIs/PIO:** A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

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

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

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

#### 3.4 **CONDITIONS ON ISSUE/TRANSFER OF SHARES**

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

3.4.2 **Issue price of shares** – Issue price of shares to persons resident outside India under the FDI Policy, shall be on the basis of SEBI guidelines in case of listed companies. In case of unlisted companies, valuation of shares has to be done by a Chartered Accountant in accordance with the guidelines issued by the erstwhile Controller of Capital Issues (CCI).

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

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

(i) Subject to FDI sectoral policy, foreign investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

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

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

**In both the above cases, the ‘Existing Venture/tie-up condition’ as defined in para 4.2.2 would apply.**

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

(d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

(e) A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscriber’s shares), of an Indian company in sectors other than financial services sectors (i.e. Banks, NBFC, Insurance, ARCs, CICs, infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the guidelines given in **Annex-2**.

(f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in **Annex-2**.

(g) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non-Resident/Non-Resident

Indian, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, ARCs, CICs, Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).

(h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.

(ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC-TRS.

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

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

(i) The following instances of transfer of capital instruments from resident to non-residents by way of sale require prior approval of RBI:

(a) Transfer of capital instruments of an Indian company engaged in financial services sector (i.e. Banks, NBFCs, Asset Reconstruction Companies, CICs, Insurance companies, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).

(b) Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997.

(c) The activity of the Indian company whose capital instruments are being transferred falls outside the automatic route and the approval of the FIPB has been obtained for the said transfer.

- (d) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
  - (e) Transfer of capital instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category – I bank for necessary due diligence , within 60 days from the date of receipt of the full and final amount of consideration. The link office of the AD Category-I Bank will consolidate such Form FC-TRS details and report the same to the Central Office of RBI.
- (ii) The transfer of capital instruments of companies engaged in sectors falling under the Government Route from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI.
- (iii) A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents mentioned in **Annex-3** should be enclosed. Reserve Bank considers the following factors while processing such applications:
- (a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
  - (b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
  - (c) The applicable sectoral cap limit in the Indian company is not breached.
  - (d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time. The current list is reproduced in **Annex-4** .
  - (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during the calendar year**.
  - (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

### 3.4.6 **Conversion of ECB/Lumpsum Fee/Royalty into Equity.**

- (i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into shares/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 SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively;
  - (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, under automatic route or SIA/FIPB route, subject to pricing guidelines of SEBI/CCI and compliance with applicable tax laws.

## 3.5 **ISSUE OF INSTRUMENTS.**

3.5.1 **Issue of Rights/Bonus Shares** – FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus / rights shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The price of shares offered on rights basis by the Indian company to non-resident shareholders shall not be lower than the price at which such shares are offered to resident shareholders.

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

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

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

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

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

- (i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:
  - (a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and
  - (b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.
- (ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.
- (iii) The issuing company is required to report the details of such issues to the Regional Office concerned of the Reserve Bank, within 30 days from the date of issue of shares.

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

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

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

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

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

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

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

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

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

Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since

the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

### **Illustration**

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

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

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

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

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

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

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

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

(v) **Additional conditions:**

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

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

consider such *inter-se* agreements for determining ownership and control when considering the case for granting approval for foreign investment.

- (c) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.
- (d) In the I& B and Defence sectors where the sectoral cap is less than 49%, the company would need to be ‘owned **and** controlled’ by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.
  - (A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term ‘largest Indian shareholder’, used in this clause, will include any or a combination of the following:
    - (I) In the case of an individual shareholder,
      - (aa) The individual shareholder,
      - (bb) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
      - (cc) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
    - (II) In the case of an Indian company,
      - (aa) The Indian company
      - (bb) A group of Indian companies under the same management and ownership control.
  - (B) For the purpose of this Clause, “Indian company” shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.
  - (C) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (i) and (ii) of clause 4.1.3(v)(d)(1) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

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

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

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

## **4.2 ENTRY ROUTES FOR INVESTMENT:**

4.2.1 Investments can be made by non-residents in the shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through two routes; the Automatic Route and the Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI or Government of India for the investment. Under the Government Route, prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required. Proposals for foreign investment under Government route as laid down in the FDI policy from time to time, are considered by the Foreign Investment Promotion Board (FIPB) in Department of Economic Affairs (DEA), Ministry of Finance.

4.2.2 Investment would be subject to the 'Existing Venture/ tie-up condition' as defined below:

4.2.2.1 With effect from January 12, 2005 the joint venture agreements are expected to include a 'conflict of interest' clause to determine/ safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the same field of economic activity. The policy is, however, expected to protect the interest of the joint venture partner where the agreement had been entered prior to January 12, 2005.

4.2.2.2 Where a foreign investor has an existing joint venture/ technology transfer/ trademark agreement in the same field, prior to January 12, 2005, the proposal for fresh investment/technology transfer/technology collaboration/trademark agreement in a new joint venture for technology transfer/ technology collaboration/trademark agreement would have to be under the Government approval route through FIPB/ Project Approval Board. The onus to provide requisite justification that the new tie-up would not jeopardize the existing joint venture or technology transfer/ trademark partner, would lie equally on the foreign investor/ technology supplier and the Indian partner.

4.2.2.3 The following investments, however, will be exempt from the requirement of Government approval even though the foreign investor may be having a joint venture or technology transfer/ trademark agreement in the same filed:

- (a) Investments to be made by Venture Capital Fund registered with the Securities and Exchange Board of India (SEBI); or
- (b) Investments by Multinational Financial Institutions like Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Finance Corporation (CDC), Deutsche Entwicklungs Gescellschaft (DEG) etc.; or
- (c) where in the existing joint venture, investment by either of the parties is less than 3 per cent; or
- (d) where the existing joint venture / collaboration is defunct or sick; or
- (e) for issue of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer / trade mark agreement of the person to whom the shares are to be issued are also in the Information Technology sector or in the mining sector for same area/mineral.

4.2.2.4 For the purpose of ‘same’ field 4 digit NIC, 1987 Code will be relevant.

#### **4.2.3 Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities in sectors with caps:**

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

- (i) An Indian company is being established with foreign investment and is owned by a non-resident entity or
- (ii) An Indian company is being established with foreign investment and is controlled by a non-resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or
- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.
- (v) It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.
- (vi) It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

### **4.3 CAPS ON INVESTMENTS**

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

### **4.4 ENTRY CONDITIONS ON INVESTMENT**

4.4.1 Investments can be permitted to be made by non-residents in the capital of a resident entity in certain sectors/activity with entry conditions. These entry conditions would be applicable for

investment only by non-resident entities. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this circular.

#### **4.5 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS**

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

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

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

#### **4.6 DOWNSTREAM INVESTMENT BY INDIAN COMPANIES**

4.6.1 The Policy for downstream investment by Indian companies seeks to lay down and clarify about compliance with the Foreign investment norms on entry route, conditionalities and sectoral caps. The 'guiding principle' is that downstream investment by companies 'owned' or 'controlled' by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream investment in Para 4.1 as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

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

4.6.3 For the purpose of this chapter,

- (i) 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors.
- (ii) 'Downstream investment' means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Para 4.1. Para 4.1.3 provides the guidelines for calculation of indirect foreign investment with conditions specified in para 4.1.3 (v)
- (iv) 'Foreign Investment' would have the same meaning as in Para 4.1

**4.6.4 Guidelines for downstream investment by Investing Indian Companies ‘owned or controlled by non resident entities’ as per Para 4.1:**

- (i) The Policy on downstream investment comprises policy for (a) only operating companies (b) operating-cum-investing companies (c) only investing companies as below:
- (ii) Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.
- (iii) Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- (iv) Investing companies: Foreign Investment in Investing Companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

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

4.6.6. For Operating-cum- investing companies and investing companies (Para 4.6.4) and for companies as per para 4.6.5 above, downstream investments can be made subject to the following conditions:

- (i) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
- (ii) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;

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

(iv) For the purpose of downstream investment, the operating cum investing companies and the investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

#### **4.7 GUIDELINES FOR CONSIDERATION OF FDI PROPOSALS BY FIPB:**

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

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

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

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

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

4.7.6 FIPB would consider each proposal in its totality

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

(i) whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;

(ii) whether the proposal involves any export projection and if so the items of export and the projected destinations.

(iii) Whether the proposal has any strategic or defence related considerations.

4.7.8 While considering proposals the following may be prioritised.

(i) Items falling in infrastructure sector.

(ii) Items which have an export potential.

(iii) Items which have large scale employment potential and especially for rural people.

(iv) Items which have a direct or backward linkage with agro business/farm sector.

(v) Items which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.

(vi) Proposals which result in induction of technology or infusion of capital.

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

(i) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any

(ii) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 76% or more) joint venture.

(iii) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.

(iv) In the case of fresh induction offerings/NRI equity and/or in cases of enlargement of foreign/NRI equity, in existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.

(v) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement (i.e. whether by increase of paid up capital/authorized capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality.

(vi) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.

(vii) Whether the activity is an industrial or a service activity or a combination of both.

(viii) Whether the items of activity involves any restriction by way of reservation for the Micro & Small Enterprises sector.

(ix) Whether there are any sectoral restrictions on the activity

(x) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

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

#### **4.8 CONSTITUTION OF FIPB :**

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

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

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

#### **4.9 APPROVAL LEVELS FOR CASES UNDER GOVERNMENT ROUTE**

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

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

#### **4.10 CASES WHICH DO NOT REQUIRE FRESH APPROVAL**

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

- (i) Cases of entities whose activities had earlier required prior approval of FIPB/CCFI/CCEA and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- (ii) Cases of entities whose activities had sectoral caps earlier and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment alongwith the initial/original investment does not exceed the sectoral caps; and
- (iii) The cases of additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose.

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

### **5.1 PROHIBITION ON INVESTMENT IN INDIA.**

FDI is prohibited in the following activities/sectors:

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

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

### **AGRICULTURE**

#### **5.2 Agriculture & Animal Husbandry**

5.2.1 100% FDI is allowed under automatic route in Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aquaculture and Cultivation of Vegetables & Mushrooms under controlled conditions and services related to agro and allied sectors.

**Note: Besides the above, FDI is not allowed in any other agricultural sector/activity.**

5.2.2 For companies dealing with development of transgenic seeds/vegetables, the following conditions apply:

- (i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.
- (ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.
- (iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.

(iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).

(v) Import of materials shall be in accordance with National Seeds Policy.

### 5.3 **Tea Plantation**

5.3.1 100% FDI is allowed in the Tea sector including tea plantations under Government route subject to the conditions of :

(i) Compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of 5 years

(ii) Prior approval of the State Government concerned in case of any future land use change.

**Note: Besides the above, FDI is not allowed in any other plantation sector/activity.**

## **INDUSTRY**

### 5.4 **MINING**

5.4.1 100% FDI is allowed under the automatic route in 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.

#### 5.4.2 **Coal and Lignite**

(i) 100% FDI is allowed under the automatic route in 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.

(ii) 100% FDI is allowed for 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.

#### 5.4.3 **Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.**

(i) India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as “prescribed substances” under the Atomic Energy Act, 1962.

(ii) Under the Industrial Policy Statement 1991, mining and production of minerals classified as “prescribed substances” and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422 dated 6<sup>th</sup> October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).

(iii) Vide Notification No. S.O.61(E) dated 18.1.2006, the Department of Atomic Energy re-notified the list of “prescribed substances” under the Atomic Energy Act 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds and minerals/concentrates including Zircon, were removed from the list of “prescribed substances”.

(iv) FDI up to 100% is allowed under Government route in 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).

(v) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.:

(A) value addition facilities are set up within India along with transfer of technology;

(B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

(vi) FDI will not be allowed in mining of “prescribed substances” listed in the Notification No. S.O. 61(E) dated 18.1.2006 issued by the Department of Atomic Energy.

## **MANUFACTURING**

### **5.5 Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)**

5.5.1 Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the equity capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The

export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Micro, Small and Medium Enterprises Development Act 2006.

**5.6 Alcohol – Distillation & Brewing:** 100% FDI is allowed under the automatic route.

**5.7 Cigars & Cigarettes Manufacture:** 100% FDI is allowed under Government route and subject to the obtaining of Industrial licence under the Industries (Development & Regulation) Act 1951.

**5.8 Coffee & Rubber processing and warehousing:** 100% FDI is allowed under the automatic route.

## **5.9 Defence Industry**

5.9.1 FDI is permissible up to 26%, under Government route subject to Industrial license under the Industries (Development & Regulation) Act 1951 and the following conditions:

- (i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence.
- (ii) Cases involving FDI will be considered by the FIPB and licences given by the Department of Industrial Policy & Promotion in consultation with Ministry of Defence.
- (iii) The applicant should be an Indian company / partnership firm.
- (iv) The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company / partnership firm being resident Indians.
- (v) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.
- (vi) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.
- (vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the foreign investor taking into account the category of weapons and equipment that are proposed to be manufactured.

- (viii) There would be a three-year lock-in period for transfer of equity from one foreign investor to another foreign investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the FIPB and the Government.
- (ix) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.
- (x) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.
- (xi) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.
- (xii) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.
- (xiii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.
- (xiv) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.
- (xv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons / entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a

verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.

(xvi) Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.

**5.10 Drugs & Pharmaceuticals including those involving use of recombinant technology -** 100% FDI is allowed under the automatic route

**5.11 Hazardous chemicals viz. hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and di-isocyanates of hydrocarbon -** 100% FDI is allowed under the automatic route and subject to the obtaining of Industrial licence under the Industries (Development & Regulation) Act 1951.

**5.12 Industrial Explosives -** 100% FDI is allowed under the automatic route and subject to the obtaining of Industrial licence under the Industries (Development & Regulation) Act 1951 and regulations under Explosives Act 1898.

### **5.13 POWER**

**5.13.1 Electric Generation, Transmission, Distribution and Trading:** FDI upto 100% is permitted under automatic route for:

- i) Generation and transmission of electric energy produced in-hydro electric, coal/lignite based thermal, oil based thermal and gas based thermal power plants.
- ii) Non-Conventional Energy Generation and Distribution.
- iii) Distribution of electric energy to households, industrial, commercial and other users and
- iv) Power Trading

5.13.2 The above would be subject to the provisions of the Electricity Act 2003.

**Note: Para 5.13.1 (i) to (iii) above do not include generation, transmission and distribution of electricity produced in atomic power plant/atomic energy since private investment in this sector/activity is prohibited and is reserved for public sector.**

## **SERVICES SECTOR**

### **5.14 Advertising and Films**

5.14.1 100% FDI under the automatic route is allowed in Advertising sector

5.14.2 100% FDI under the automatic route is allowed in Film Industry including film financing, production, distribution, exhibition, marketing and associated activities related to film industry.

## **5.15 Civil Aviation Sector**

5.15.1 The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services / Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.

5.15.2 For the purposes of the Civil Aviation sector:

- (i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;
- (ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;
- (iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights.
- (iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward.
- (v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;
- (vi) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;
- (vii) "Scheduled air transport service", means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public.
- (viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Chartered and Cargo airlines.
- (ix) "Chartered" and "Cargo" airlines would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation.

- (x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;
- (xi) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

### 5.15.3 Policy for FDI in Civil Aviation sector

#### (i) Airports:

- (a) Greenfield projects- FDI upto 100% is allowed under the automatic route.
- (b) Existing projects- FDI upto 100% is allowed. The investment upto 74% is under the automatic route and beyond 74% under the Government route.

#### (ii) Air Transport Services:

- (a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Airlines; Chartered Airlines; Cargo Airlines; helicopter and seaplane services.
- (b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled, Non-Scheduled, and Chartered airlines.
- (c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.

#### (iii) FDI ceilings in Air Transport Services:

- (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline - FDI up to 49% and investment by Non-resident Indians (NRI) up to 100% allowed on the automatic route.
- (b) Non-Scheduled Air Transport Service/ Non-Scheduled airlines, Chartered airlines, and Cargo airlines- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed. FDI in on the automatic route upto 49% and on the Government route beyond 49% and upto 74%.
- (c) Helicopter services/seaplane services requiring DGCA approval- FDI up to 100% allowed on the automatic route.

#### (iv) FDI ceilings in other services under Civil Aviation sector

- (a) Ground Handling Services- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed. FDI under the automatic route upto 49% and through the

Government route beyond 49% and upto 74%. This will be subject to sectoral regulations and security clearance.

(b) Maintenance and Repair organizations; flying training institutes; and technical training institutions - FDI up to 100% allowed on the automatic route.

5.15.4 The policy for FDI in the Civil Aviation Sector would be subject to the Aircraft Rules, 1934 as amended from time to time, Civil Aviation Requirements, and Aeronautical Information Circulars as notified by the Ministry of Civil Aviation.

### **5.16. Asset Reconstruction Companies:**

5.16.1 'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

5.16.2 Persons resident outside India, other than Foreign Institutional Investors (FIIs), can invest in the equity capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Automatic Route is not available for such investment. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs and FDI is restricted to 49 per cent of the paid-up capital of the ARC.

5.16.3 However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest upto 49 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.

5.16.4 Any individual investment of more than 10% would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

### **5.17 Banking –Private sector**

5.17.1 FDI limit in Private Sector Banks is 74 % including investment by FIIs. This will include FDI investment under the Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders. FDI as above upto 49% is under the automatic route and beyond that upto 74% on the Government route.

5.17.2 The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the

paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

5.17.3 The stipulations as above will be applicable to all investments in existing private sector banks also.

5.17.4 The permissible limits under portfolio investment schemes through stock exchanges for FIIs and NRIs will be as follows:

- (i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent of the total paid-up capital, aggregate limit for all FIIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.
  - (a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital.
  - (b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.
  - (c) Applications for foreign direct investment (FDI route) in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.
  - (d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and FIPB as per para 4.2(iii) above.
  - (e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.
  - (f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to foreign investors as well.

(ii) Setting up of a subsidiary by foreign banks

- (a) Foreign banks will be permitted to either have branches or subsidiaries but not both.
- (b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.
- (c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.
- (d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.
- (e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.
- (f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI
- (g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.

(iii) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.

## **5.18 Banking- Public Sector**

5.18.1 FDI and Portfolio Investment in nationalized Banks are subject to overall statutory limit of 20% under Government route as per section 3(2D) of the Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. The same ceiling is also applicable to the State Bank of India and its associate Banks.

## **5.19 Broadcasting**

5.19.1 **Terrestrial Broadcasting FM (FM Radio):** Foreign investment, including FDI, NRI and PIO investments and portfolio investments are permitted up to 20% equity for FM Radio's Broadcasting Services with prior approval of the Government subject to such terms and conditions

as specified from time to time by Ministry of Information and Broadcasting for grant of permission for setting up of FM Radio Stations.

**5.19.2 Cable Network:** Foreign investment, including FDI, NRI and PIO investments and portfolio investments are permitted up to 49% for Cable Networks under Government route subject to Cable Television Network Rules, 1994 and other conditions as specified from time to time by Ministry of Information and Broadcasting.

**5.19.3 Direct –to-Home:** Foreign investment, including FDI, NRI and PIO investments and portfolio investments are permitted up to 49% for Direct to Home under Government route. Within the limit of 49%, FDI will not exceed 20%. This will be subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting.

**5.19.4 Headend-In-The-Sky (HITS) Broadcasting Service:**

(i) Headend-in-the-Sky (HITS) Broadcasting Service refers to the multichannel downlinking and distribution of television programme in C-Band or Ku Band wherein all the pay channels are downlinked at a central facility (Hub/teleport) and again uplinked to a satellite after encryption of channel. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to the subscribers by using a land based transmission system comprising of infrastructure of cable/optical fibres network.

(ii) The total direct and indirect foreign investment including portfolio and foreign direct investment in HITS shall not exceed 74%. FDI upto 49% would be on automatic route and beyond that under government route.

(iii) This will be subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting.

**5.19.4 Setting up hardware facilities such as up-linking, HUB etc.**

(i) FDI policy in the Up-linking of TV Channels is as under:

- a) Foreign investment of FDI and FII up to 49% would be permitted under the Government route for setting up Up-linking HUB/ Teleports;
- b) FDI up to 100% would be allowed under the Government route for Up linking a Non-News & Current Affairs TV Channel;
- c) Foreign investment of FDI and FII up to 26% would be permitted under the Government route for Up-linking a News & Current Affairs TV Channel subject to the condition that

the portfolio investment from FII/ NRI shall not be “persons acting in concert” with FDI investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

- (ii) The above will be further subject to the condition that the Company permitted to uplink the channel shall certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.
- (iii) FDI for Up-linking TV Channels will be subject to compliance with the Up-linking Policy notified by the Ministry of Information & Broadcasting from time to time.

**5.20 Business Services-** 100% FDI under the automatic route is allowed in Data processing, software development and computer consultancy services; Software supply services; Business and management consultancy services, Market Research Services, Technical testing& Analysis services.

### **5.21 Commodity Exchanges**

5.21.1 Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.

5.21.2 For the purposes of this chapter,

- (i) “Commodity Exchange” is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.
- (ii) “recognized association” means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952
- (iii) “Association” means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.
- (iv) “Forward contract” means a contract for the delivery of goods and which is not a ready delivery contract.
- (v) “Commodity derivative” means-
  - a contract for delivery of goods, which is not a ready delivery contract; or
  - a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in

consultation with the Forward Markets Commission by the Central Government, but does not include securities.

### 5.21.3 Policy for foreign investment in Commodity Exchanges

- (i) There is composite ceiling of 49% for foreign investment under Government route as follows:
  - (a) Investment upto 26% as Foreign Direct Investment (FDI) under the FDI Scheme incorporated as Schedule 1 under regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 (FEMA Regulations)
  - (b) Investment upto 23% by registered FII under the Portfolio Investment Scheme incorporated as Schedule 2 under Regulation 5(2) of the FEMA Regulations,
- (ii) FII purchases shall be restricted to secondary market only.
- (iii) No foreign investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies.

## 5.22 Construction and maintenance

5.22.1 100% FDI is allowed under the automatic route in Construction and maintenance of-roads, rail-beds, bridges, tunnels, pipelines, ropeways, runways, waterways & water reservoirs, hydroelectric projects, power plants and industrial plants.

5.22.2 100 % FDI is allowed under the automatic route in construction and maintenance of Roads and highways offered on BOT basis including collection of toll.

5.22.3 100 % FDI is allowed under the automatic route in construction and maintenance of Rural Drinking Water Supply Projects, Package Water Treatment Plants, Rain and Rain Water Harvesting Structures, Waste-Water Recycling And Re-Use Techniques And Facilities, Rain-Water Re-Charging And Re-Use Techniques Of Ground Water.

5.22.4 **Ports and Harbours:** 100% FDI is allowed under the automatic route for:

- (i) Leasing of existing assets of ports
- (ii) Construction/creation and maintenance of assets such as-container terminals bulk/break bulk/multipurpose and specialized cargo berths, warehousing, container freight stations, storage facilities and tank farms, crantage/ handling equipment, setting up of captive power plants, dry docking and ship repair facilities.
- (iii) Leasing of equipment for port handling and leasing of floating crafts

(iv) Captive facilities for port based industries.

5.22.5 FDI upto 100% is permitted on the automatic route for **Mass Rapid Transport Systems** in all Metropolitan Cities including associated commercial development of real estate. The conditions at para 5.23.1, 5.23.2 and 5.23.3 would not apply.

### **5.23 Development of Townships, Housing, Built-up infrastructure and Construction-development projects.**

5.23.1 FDI up to 100% under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure) is allowed subject to the following guidelines:

Minimum area to be developed under each project would be as under:

- (i) In case of development of serviced housing plots, a minimum land area of 10 hectares
- (ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts
- (iii) In case of a combination project, any one of the above two conditions would suffice

5.23.2 The investment would further be subject to the following conditions:

- (j) Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
- (ii) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.

5.23.3 At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, “undeveloped plots” will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

5.23.4 The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

5.23.5 The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned.

5.23.6 The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer.

5.23.7 The conditions as at paras 5.23.1, 5.23.2 and 5.23.3 would not apply to Hotels & Tourism, Hospitals and SEZ's.

5.23.8 For investment by NRIs, the conditions at paras 5.23.1, 5.23.2 and 5.23.3 would not apply.

5.23.9 100% FDI is allowed under the automatic route in development of Special Economic Zones (SEZ) without the conditionalities at paras 5.23.1, 5.23.2 and 5.23.3 above. This will be subject to the provisions of Special Economic Zones Act 2005 and the SEZ Policy of the Department of Commerce.

5.23.10 FDI is not allowed in Real Estate Business.

#### **5.24 Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.**

5.24.1 100% FDI is allowed under the Government route.

5.24.2 This will be subject to existing Law i.e Indian Post Office Act 1898 and exclusion of activity relating to the distribution of letters.

#### **5.25. Credit Information Companies (CIC)**

5.25.1 Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.

5.25.2 Foreign investment consisting of FDI and FII upto 49% is permitted under the Government route, subject to regulatory clearance from RBI.

5.25.3 Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.

5.25.4 Such FII investment would be permitted subject to the conditions that:

- (a) No single entity should directly or indirectly hold more than 10% equity.
- (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and

(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

**5.26 Health and Medical Services:** 100% FDI is allowed under the automatic route

**5.27 Hotels and Tourism related Industry**

5.27.1 100% Foreign Investment is allowed under automatic route.

5.27.2 The terms hotel includes restaurants, beach resorts and other tourism complexes providing accommodation and /or catering and food facilities to tourists. The term tourism related industry includes:

- (i) Travel agencies, tour operating agencies and tourist transport operating agencies
- (ii) Units providing facilities for cultural, adventure and wildlife experience to tourists
- (iii) Surface, air and water transport facilities for tourists
- (iv) Convention/seminar units and organizations

**5.28 Industrial Parks - both setting up and already established Industrial Parks**

5.28.1 FDI up to 100% is permitted under the automatic route in Industrial Parks.

5.28.2 FDI up to 100% on the automatic route is allowed in Construction development projects, etc. prescribing therein, inter-alia, the conditions for minimum capitalization, minimum area requirements and lock-in of original investment as per para 5.23 above.

5.28.3 For the purposes of this chapter:

- (i) “Industrial Park” is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.
- (ii) “Infrastructure” refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.
- (iii) “Common Facilities” refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel

desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.

(iv) “Allocable area” in the Industrial Park means-

(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.

(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.

(c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.

(v) “Industrial Activity” means manufacturing, electricity, gas and water supply, post and telecommunications, software publishing, consultancy and supply, data processing, database activities and distribution of electronic content, other computer related activities, Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.

5.28.4 FDI up to 100% under the automatic route is allowed both in setting up new and in established industrial parks and would not be subject to the conditionalities applicable for construction development projects etc. spelt out in Para 5.23 above provided the Industrial Parks meet with the under-mentioned conditions:

(i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;

(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

## **5.29 Insurance**

5.29.1 FDI up to 26% in the Insurance sector, as prescribed in the Insurance Act, 1999, is allowed under the automatic route.

5.29.2 This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities.

### **5.30 Infrastructure Company in the Securities Market:**

5.30.1 Foreign investment is permitted in infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations and subject to the following conditions:

- (i) There is a composite ceiling of 49 per cent for Foreign Investment, with a FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital;
- (ii) FDI will be allowed under the Government route; and
- (iii) FII can invest only through purchases in the secondary market.

### **5.31 Non-Banking Finance Companies (NBFC)**

5.31.1 100% foreign investment in NBFC is allowed under the automatic route in the following activities:

- (i) Merchant Banking
- (ii) Under Writing
- (iii) Portfolio Management Services
- (iv) Investment Advisory Services
- (v) Financial Consultancy
- (vi) Stock Broking
- (vii) Asset Management
- (viii) Venture Capital
- (ix) Custodian Services
- (x) Factoring
- (xi) Credit Rating Agencies
- (xii) Leasing & Finance
- (xiii) Housing Finance
- (xiv) Forex Broking
- (xv) Credit Card Business
- (xvi) Money Changing Business
- (xvii) Micro Credit
- (xviii) Rural Credit

5.31.2 Investment would be subject to the following minimum capitalisation norms:

- (i) US \$0.5 million for foreign capital upto 51% to be brought upfront
- (ii) US \$ 5 million for foreign capital more than 51% and upto 75% to be brought upfront
- (iii) US \$ 50 million for foreign capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.
- (iv) 100% foreign owned NBFCs with a minimum capitalisation of US\$ 50 million can set up step down subsidiaries for specific NBFC activities, without any restriction on number of operating subsidiaries and without bringing in additional capital.
- (v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.
- (vi) Non- Fund based activities : US \$0.5 million for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:

It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

**Note:** The following activities would be classified as Non-Fund Based activities:

- (a) Investment Advisory Services
- (b) Financial Consultancy
- (c) Forex Broking
- (d) Money Changing Business
- (e) Credit Rating Agencies
- (vii) This will be subject to compliance with the guidelines of RBI.

5.31.3 Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.

5.31.4 **Venture Capital Fund (VCF):** A Foreign Venture Capital Investor(FVCI) may contribute upto 100% of the capital of an Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments can be made under automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can

also invest in domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to RBI regulations and FDI policy. However, in case the entity undertaking venture capital fund activity is a Trust registered under the Indian Trust Act, 1882, foreign investment would be permitted under the Government route. FVCIs are also allowed to invest in other companies subject to FDI Regulations.

5.31.5 The NBFC will have to comply with the guidelines of the RBI.

### **5.32 Petroleum & Natural Gas Sector**

5.32.1 FDI up to 100% under the automatic route is permitted in exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products, actual trading and marketing of petroleum products, petroleum product pipelines, natural gas/LNG pipelines, market study and formulation and Petroleum refining in the private sector. This will be 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.

5.32.2 FDI up to 49% is permitted under the Government route in petroleum refining by the Public Sector Undertakings (PSU). This should not involve any divestment or dilution of domestic equity in the existing PSUs.

### **5.33. Print Media**

5.33.1 Publishing of Newspaper and periodicals dealing with news and current affairs: Foreign investment, including FDI and investment by NRIs/PIOs/FII, up to 26%, is permitted under the Government route.

5.33.2 Publication of Indian editions of foreign magazines dealing with news and current affairs:

- (i) Foreign investment, including FDI and investment by NRIs/PIOs/FII, up to 26%, is permitted under the Government route.
- (ii) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.
- (iii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008.

5.33.3 Publishing/printing of Scientific and Technical Magazines/specialty journals/ periodicals: 100% FDI is permitted under the Government route.

- (i) This will also be 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.

#### 5.33.4 Publication of facsimile edition of foreign newspapers:

- (i) FDI up to 100% is permitted under Government route in publication of facsimile edition of foreign newspapers provided the FDI is by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.
- (ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956.
- (iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.

**5.34 Research and Development Services excluding basic Research and setting of R&D/ academic institutions which would award degrees/diplomas/certificates:** 100% FDI is allowed under the automatic route

#### **5.35 Security Agencies in Private sector**

The 'Private Security Agencies (Regulation) Act, 2005' regulates the operations of private security agencies. Under Section 6(2) of the above Act, "A company, firm or an association of persons shall not be considered for issue of a licence under this Act, if, it is not registered in India, or is having a proprietor or a majority shareholder, partner or director, who is not a citizen of India". As such, under the provisions of this Act:

- a foreign company cannot be considered for a license under the Act
- only a firm registered in India can be eligible for a license
- to be eligible for a license under the Act, a firm cannot have a foreign director/partner
- majority shareholder cannot be a foreigner-i.e. foreign shareholding would be restricted to a maximum of 49% under the Government route.

#### **5.36 Satellites – Establishment and operation:**

5.36.1 FDI upto 74% is allowed under Government route.

5.36.2 This will be subject to the sectoral guidelines of Department of Space/ISRO.

**5.37 Storage and Warehouse Services:** 100% FDI is allowed under the automatic route in Storage and Warehousing including warehousing of agricultural products with refrigeration (cold storage).

### **5.38 Telecommunication**

5.38.1 **Telecom services:** Foreign Direct Investment limit in telecom services is 74 percent subject to the following conditions:

- (i) This is applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.
- (ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. In any case, the 'Indian' shareholding will not be less than 26 percent.
- (iii) FDI up to 49 percent is on the automatic route and beyond that on the Government route. FDI in the licensee company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.
- (iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.
- (v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.

5.38.2 Security Conditions:

- (i) The Chief Officer In-charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.
- (ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor (Department of

Telecommunications) would be required if such information is to be provided to anybody else.

- (iii) For security reasons, domestic traffic of such entities as may be identified /specified by the licensor shall not be hauled/routed to any place outside India.
- (iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- (v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.
- (vi) The majority Directors on the Board of the company shall be Indian citizens.
- (vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.
- (viii) The Company shall not transfer the following to any person/place outside India:-
  - (a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and
  - (b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).
- (ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.
- (x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.

- (xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).
- (xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.
- (xiii) The licensee company is not allowed to use remote access facility for monitoring of content.
- (xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.
- (xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.
- (xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.
- (xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.
- (xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.
- (xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.
- (xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.
- (xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this circular irrespective of the level of FDI.

(xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

5.38.3 The conditions at para 5.39.2 above shall also be applicable to the companies operating telecom service(s) with the FDI cap of 49%.

5.38.4 All the telecom service providers shall submit a compliance report on the aforesaid conditions to the licensor on 1<sup>st</sup> day of July and January on six monthly basis.

5.38.5 (i) FDI upto 74% is allowed in following activities

(a) ISP with gateways

(b) ISP's not providing gateways i.e without gate-ways (both for satellite and marine cables)

Note: The new guidelines of August 24, 2007 Department of Telecommunications provide for new ISP licenses with FDI upto 74%.

(c) Radio paging

(d) End-to-End bandwidth

(ii) FDI upto 49% would be allowed under the automatic route and above that under the Government route.

(iii) This will be subject to licensing and security requirements notified by the Department of Telecommunications.

5.38.6 (i) FDI upto 100% is allowed for the following activities

(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I)

(b) Electronic Mail

(c) Voice Mail

(ii) The investment upto 49% is under the automatic route and beyond 49% under the Government route.

(iii) This will be subject to the condition that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.

(iv) This will be subject to licensing and security requirements notified by the Department of Telecommunications.

### 5.39 Trading:

5.39.1 100% FDI is permitted under the automatic route for trading companies for the following activities:

#### 5.39.1.1 Cash & Carry trading Wholesale Trading/ Wholesale Trading.

5.39.1.1 (i) **Definition:** Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with export/ex-bonded warehouse business sales and B2B e-Commerce.

#### 5.39.1.1 (ii) Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):

- (a) For undertaking WT, requisite licenses/registration/ permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.
- (b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:
  - (I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or
  - (II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/ Government Body/ Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or
  - (III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or
  - (IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.

**Note: An Entity to whom WT is made, may fulfill any one of the 4 conditions.**

- (c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.
- (d) WT of goods would be permitted among companies of the same group . However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture and the wholesale made to the group companies should be for their internal use only.
- (e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.
- (f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.

5.39.1.2 **Trading for exports.**

5.39.1.3 **E-commerce activities:** E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

5.39.2 100% FDI is permitted under the Government route for trading companies for the following activities:

- (i) Trading of items sourced from small scale sector.
- (ii) Test marketing of such items for which a company has approval for manufacture, provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facility commences simultaneously with test marketing.

5.39.3 Single Brand product trading: FDI up to 51%, under the Government route is allowed in retail trade of ‘Single Brand’ products. This is, inter alia, 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.

- (i) FDI up to 51% in retail trade of ‘Single Brand’ products 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-retailing would cover only products which are branded during manufacturing.

(ii) Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The application would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

(iii) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the products proposed to be sold satisfy the notified guidelines, before being considered by the FIPB for Government approval.

**5.40. Transport and Transport Support Services:** 100% FDI under the automatic route is allowed for:

5.40.1 Pipeline transport, ocean and water transport, inland water transport.

5.40.2 Transport Support Services:

(i) Support services to land transport like operation of highway bridges, toll roads, and vehicular tunnels.

(ii) Support services to water transport like operation and maintenance of piers, loading and discharging of vessels.

(iii) Services incidental to transport like cargo handling incidental to land, water and air transport

(iv) Rental and leasing of - motor vehicles without operator for passenger transport and freight transport, refrigerated/cold transport.

(v) Renting of -transport equipment without operator, of other transport equipment.

**5.41.** In sectors/Activities not listed above, FDI is permitted upto 100% on the automatic route subject to applicable laws/sectoral rules/regulations.

## **CHAPTER 6: REMITTANCE, REPORTING AND VIOLATION**

### **6.1 REMITTANCE AND REPATRIATION**

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

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

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

#### **(iii) Remittance on winding up/liquidation of Companies**

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

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

**6.1.2 Repatriation of Dividend:** Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The

repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

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

## **6.2. REPORTING OF FDI**

### **6.2.1 Reporting of Inflow**

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

### **6.2.2 Reporting of issue of shares**

- (i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures / fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in **Annex-1**, not later than 30 days from the date of issue of shares.
- (ii) Part A of 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 Part A:
  - (a) A certificate from the Company Secretary of the company certifying that:
    - (A) all the requirements of the Companies Act, 1956 have been complied with;
    - (B) terms and conditions of the Government's approval, if any, have been complied with;
    - (C) the company is eligible to issue shares under these Regulations; and

(D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

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

(b) A certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

(c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

(d) Part - B of Form FC-GPR should be filed on an annual basis by the Indian company, directly with the Reserve Bank<sup>6</sup>. This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information in Part B submitted by 31st July will pertain to all the investments made in the previous years up to March 31). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct / portfolio investment may be separately indicated.

(e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation / merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty / lumpsum technical know-how fee / import of capital goods by units in SEZs has to be reported in Form FC-GPR.

### 6.2.3 Reporting of transfer of shares

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

### 6.2.4 Reporting of Non-Cash

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

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

#### 6.2.5 Reporting of FCCB/ADR/GDR Issues

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

### 6.3 ADHERENCE TO GUIDELINES/ORDERS AND CONSEQUENCES OF VIOLATION

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

#### 6.3.1 Penalties

- (i) If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of

India/FIPB/Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

- (ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means any body corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
- (iii) Any Adjudicating Authority adjudging any contraventions under 6.3.1(i), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

### **6.3.2 Adjudication and Appeals**

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

### **6.3.3 Compounding Proceedings**

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person. No contravention shall be compounded unless the amount involved in

such contravention is quantifiable. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously and not later than 180 days from the date of application made to the Compounding Authority. Compounding Authority shall issue order specifying the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contraventions.

**FC-GPR**

**PART - A**

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

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

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

|    |   |                                  |
|----|---|----------------------------------|
| 2. | Description of the main business activity<br><br>NIC Code   |                                  |
|    | Location of the project and NIC code for the district where the project is located                            |                                  |
|    | Percentage of FDI allowed as per FDI policy   |                                  |
|    | State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable) | Automatic Route / Approval Route |
| 3  | <b>Details of the foreign investor / collaborator*</b>  |                                  |

|     |  |   |  |  |
|-----|--|---|--|--|
|     | <p>Name</p> <p>Address</p> <p>Country</p> <p>Constitution / Nature of the investing Entity<br/>[Specify whether</p> <ol style="list-style-type: none"> <li>1. Individual</li> <li>2. Company</li> <li>3. FII</li> <li>4. FVCI</li> <li>5. Foreign Trust</li> <li>6. Private Equity Fund</li> <li>7. Pension / Provident Fund</li> <li>8. Sovereign Wealth Fund (SWF)**</li> <li>9. Partnership / Proprietorship Firm</li> <li>10. Financial Institution</li> <li>11. NRIs / PIO</li> <li>12. Others (please specify)]</li> </ol> <p>Date of incorporation</p> <p>*If there is more than one foreign investor/collaborator, separate Annex may be included for items 3 and 4 of the Form.</p> <p>** 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.</p> |   |  |  |
| 4   | <b>Particulars of Shares / Convertible Debentures Issued</b>   |   |  |  |
| (a) | <b>Nature and date of issue</b>  |   |  |  |
|     | 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)                                    |               |                 |                   |                |                              |                          |
|     |                                | <b>Total</b>   |               |                 |                   |                |                              |                          |
| (b) | <b>Type of security issued</b> |  |               |                 |                   |                |                              |                          |
|     | <b>No.</b>                     | <b>Nature of security</b>                                  | <b>Number</b> | <b>Maturity</b> | <b>Face value</b> | <b>Premium</b> | <b>Issue Price per share</b> | <b>Amount of inflow*</b> |
|     | 01                             | Equity   |               |                 |                   |                |                              |                          |
|     | 02                             | Compulsorily Convertible Debentures                        |               |                 |                   |                |                              |                          |
|     | 03                             | Compulsorily Convertible Preference shares                 |               |                 |                   |                |                              |                          |
|     | 04                             | Others (please specify)                                    |               |                 |                   |                |                              |                          |
|     |                                | <b>Total</b>   |               |                 |                   |                |                              |                          |

- 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) | <b>Break up of premium</b> | <b>Amount</b> |
|     | Control Premium            |               |
|     | Non competition fee        |               |
|     | Others <sup>@</sup>        |               |
|     | <b>Total</b>               |               |

<sup>@</sup> please specify the nature

|     |  |  |
|-----|--|--|
| (d) | <p><b>Total inflow</b> (in Rupees) on account of issue of shares / convertible debentures to non-residents (including premium, if any) vide</p> <p>(i) Remittance through AD:<br/> (ii) Debit to NRE/FCNR A/c with Bank<br/> (ii) Others (please specify)</p> <p>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.</p> |  |
| (e) | <b>Disclosure of fair value of shares issued**</b>   |  |
|     | 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 |                     |  |                         |   |   |                         |   |
|---------------------------------------|---------------------|--|-------------------------|---|---|-------------------------|---|
| Investor category                     |                     | Equity                                   |                         |   | Compulsorily convertible Preference Shares/ |                         |   |
|                                       |                     | No. of shares                            | Amount (Face Value) Rs. | % | No. of shares                               | Amount (Face Value) Rs. | % |
| a)                                    | <b>Non-Resident</b> |  |                         |   |   |                         |   |
|                                       | <b>01</b>           | <b>Individuals</b>                       |                         |   |   |                         |   |
|                                       | <b>02</b>           | <b>Companies</b>                         |                         |   |   |                         |   |
|                                       | <b>03</b>           | <b>FIIIs</b>                             |                         |   |   |                         |   |
|                                       | <b>04</b>           | <b>FVCIs</b>                             |                         |   |   |                         |   |
|                                       | <b>05</b>           | <b>Foreign Trusts</b>                    |                         |   |   |                         |   |
|                                       | <b>06</b>           | <b>Private Equity Funds</b>              |                         |   |   |                         |   |
|                                       | <b>07</b>           | <b>Pension/ Provident Funds</b>          |                         |   |   |                         |   |
|                                       | <b>08</b>           | <b>Sovereign Wealth Funds</b>            |                         |   |   |                         |   |
|                                       | <b>09</b>           | <b>Partnership/ Proprietorship Firms</b> |                         |   |   |                         |   |

|           |           |                                |  |  |  |  |  |  |
|-----------|-----------|--------------------------------|--|--|--|--|--|--|
|           | <b>10</b> | <b>Financial Institutions</b>  |  |  |  |  |  |  |
|           | <b>11</b> | <b>NRIs/PIO</b>                |  |  |  |  |  |  |
|           | <b>12</b> | <b>Others (please specify)</b> |  |  |  |  |  |  |
|           |           | <b>Sub Total</b>               |  |  |  |  |  |  |
| <b>b)</b> |           | <b>Resident</b>                |  |  |  |  |  |  |
|           |           | <b>Total</b>                   |  |  |  |  |  |  |

**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 3<sup>rd</sup> May 2000, as amended from time to time.

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

a) Foreign entity/entities—(other than individuals), to whom we have issued shares have existing joint venture or technology transfer or trade mark agreement in India in the same field and Conditions stipulated in para 4.2.2 of this circular have been complied with.

**OR**

Foreign entity/entities—(other than individuals), to whom we have issued shares do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field.

b) We are not an SSI unit.

**OR**

We are a SSI unit and the investment limit of 24 % of paid-up capital has been observed/  
requisite approvals have been obtained.

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

**OR**

Shares issued are bonus.

**OR**

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

**OR**

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

3. Shares have been issued in terms of SIA /FIPB approval No. \_\_\_\_\_ dated



**CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY\* OF THE  
INDIAN COMPANY ACCEPTING THE INVESTMENT:**

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

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

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

\* If the company doesn't have a full time Company Secretary, a certificate from a practising Company Secretary may be submitted.

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

**FOR USE OF THE RESERVE BANK**

**ONLY: Registration Number for the FC-**

**GPR:**

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

**PART-B**

(i) This part of Form FC-GPR is to be submitted to the Director, Balance of Payment Statistical Division, Department of Statistics and Information Management, Reserve Bank of India, C-8, 3<sup>rd</sup> Floor, Bandra- Kurla Complex, Bandra (E), Mumbai – 400051; Tel: 2657 1265, 2657 2513, Fax: 26570848; email:surveyfla@rbi.org.in

(ii) This is an annual return to be submitted by 31<sup>st</sup> of July every year by all companies, pertaining to all investments by way of direct/portfolio investments/re-invested earnings/others in the Indian company made during the previous years (e.g. the information in Part B submitted by 31<sup>st</sup> July 2008 will pertain to all the investments made in the previous years up to March 31, 2008). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the date of the balance sheet. The details of overseas investments in the company both under Direct / portfolio investment may be separately indicated. Please use end-March Market prices/exchange rates for compiling the relevant information.

|   |  |                             |
|---|--|-----------------------------|
| Permanent Account Number (PAN) of the investee company given by the Income Tax Department |  |                             |
| <b>No.</b>  | <b>Particulars</b>   | <b>(In Block Letters)</b>   |
| 1.  | Name<br><br>Address<br><br><br>State<br><br>Registration No. given by the Registrar of Companies |                             |
| 2.  | Name of the Contact Person:<br>Tel.<br>Fax:  | Designation:<br><br>E-mail: |
| 3.  | Account closing date:  |                             |

|  |  |   |  |   |
|--|--|---|--|---|
| 4.   | Details of changes if any, with regard to information furnished earlier (Change in name of company / Change of location, activities, etc.) |   |  |   |
| 5.   | <b>Whether listed company or unlisted company</b>  | <b>Listed / Unlisted</b>                        |  |   |
| 5.1  | If listed,<br>i) Market value per share as at end- March<br>ii) Net Asset Value per share as on date of latest Audited Balance Sheet       |   |  |   |
| 5.2  | If unlisted, Net Asset Value per share as on date of latest Audited Balance Sheet  |   |  |   |
| <b>6. Foreign Direct Investment (FDI)</b>          |  |   |  |   |
|  | <b>Amount in Lakhs of</b>  |   |  |   |
|  | <b>Foreign Liabilities In India*</b>   |   | <b>Foreign Assets Outside &amp;</b>              |   |
|  | Outstanding at end-March of <b>Previous Year</b>   | Outstanding at end-March of <b>Current Year</b> | Outstanding at end-March of <b>Previous Year</b> | Outstanding at end-March of <b>Current Year</b> |
| <b>6.0 Equity Capital</b>                          |  |   |  |   |
| 6.1 Other Capital <sup>Ω</sup>                     |  |   |  |   |
| 6.2 Disinvestments during the year                 |  |   |  |   |
| 6.3 Retained earnings during the year <sup>+</sup> |  |   |  |   |

\* Please furnish the outstanding investments of **non-resident investors (Direct Investors)** who were holding **10 per cent or more** ordinary shares of your Company on the reporting date.

& Please furnish your total investments outside the country in each of which **your Company** held **10 per cent or more** ordinary shares of that non-resident enterprise on the reporting date.

<sup>Ω</sup> Other Capital includes transactions between the non-resident direct investor and investee / reporting company, relating to i) Short Term Borrowing from overseas investors, ii) Long Term Borrowing from overseas investors, iii) Trade Credit, iv) Suppliers Credit, v) Financial Leasing, vi) Control Premium, vii) Non-Competition Fee in case of transactions not involving issue of shares, viii) Non-cash acquisition of shares against technical transfer, plant and machinery, goodwill, business development and similar considerations and ix) investment in immovable property made during the year.

+ Under foreign liabilities, for retained earnings (undistributed profit), please furnish the proportionate amount as per the share holding of non-resident investors (Direct investors). Similarly under foreign assets outside India, the retained earnings of your company would be proportionate to your shareholding of ordinary shares in the non-resident enterprise.

| <b>7. Portfolio and Other Investment</b>  |   |  |   |  |
|---|---|--|---|--|
| <i>[Please furnish here the outstanding investments other than those mentioned under FDI above]</i> |   |  |   |  |
|   | <b>Amount in Lakhs of</b>                 |  |   |  |
|   | <b>Foreign Liabilities In India</b>       |  | <b>Foreign Assets Outside</b>             |  |
|   | Outstanding at end-March of Previous Year | Outstanding at end-March of Current Year | Outstanding at end-March of Previous Year | Outstanding at end-March of Current Year |
| 7.0 Equity Securities   |   |  |   |  |
| 7.1 Debt Securities   |   |  |   |  |
| 7.1.1 Bonds and   |   |  |   |  |
| 7.1.2 Money Market Instruments  |   |  |   |  |
| 7.2 Disinvestments during the year  |   |  |   |  |
| <b>8. Financial Derivatives (notional value)</b>  |   |  |   |  |
| <b>9. Other Investment</b>  |   |  |   |  |
| 9.1 Trade Credit  |   |  |   |  |
| 9.1.1 Short Term  |   |  |   |  |
| 9.1.2 Long Term   |   |  |   |  |
| 9.2 Loans <sup>∞</sup>  | Please see the note below                 |  |   |  |
| 9.3 Others  |   |  |   |  |
| 9.3.1 Short Term  |   |  |   |  |
| 9.3.2 Long Term   |   |  |   |  |
|   |   |  |   |  |

<sup>∞</sup> **Note:** As the details of the Loans availed of by your company are collected through Authorised Dealers separately by Foreign Exchange Department of the Reserve Bank in ECB returns, the details of external loans availed by your company need not be filled in. However, the external loans extended by your company to non-resident enterprises other than WOS/JVs outside India should be reported under "Foreign Assets outside India".

| <b>10. Shareholding pattern as at end- March</b> |                                    |               |                         |   |  |                         |   |
|--|------------------------------------|---------------|-------------------------|---|--|-------------------------|---|
| Investor category / Nature of investing entity   |                                    | Equity        |                         |   | Compulsorily convertible Preference Shares/ Debentures |                         |   |
|  |                                    | No. of shares | Amount (Face Value) Rs. | % | No. of shares  | Amount (Face Value) Rs. | % |
| a)   | <b>Non-Resident</b>                |               |                         |   |  |                         |   |
|  | <b>01 Individuals</b>              |               |                         |   |  |                         |   |
|  | <b>02 Companies</b>                |               |                         |   |  |                         |   |
|  | <b>03 FIIs</b>                     |               |                         |   |  |                         |   |
|  | <b>04 FVCIs</b>                    |               |                         |   |  |                         |   |
|  | <b>05 Foreign Trusts</b>           |               |                         |   |  |                         |   |
|  | <b>06 Private Equity Funds</b>     |               |                         |   |  |                         |   |
|  | <b>07 Pension/ Provident Funds</b> |               |                         |   |  |                         |   |

|   |                 |   |  |  |  |  |  |  |
|---|-----------------|---|--|--|--|--|--|--|
|   | <b>08</b>       | <b>Sovereign Wealth Fund (SWF)</b>        |  |  |  |  |  |  |
|   | <b>09</b>       | <b>Partnership / Proprietorship Firms</b> |  |  |  |  |  |  |
|   | <b>10</b>       | <b>Financial Institutions</b>             |  |  |  |  |  |  |
|   | <b>11</b>       | <b>NRI/PIO</b>                            |  |  |  |  |  |  |
|   | <b>12</b>       | <b>Others (please specify)</b>            |  |  |  |  |  |  |
|   |                 | <b>Sub Total</b>                          |  |  |  |  |  |  |
| <b>b)</b>   | <b>Resident</b> |   |  |  |  |  |  |  |
|   |                 | <b>Total</b>                              |  |  |  |  |  |  |
| 11. Persons employed during the financial year ending March 31 <sup>®</sup> |                 |   |  |  |  |  |  |  |
|   | Directly        |   |  |  |  |  |  |  |
|   | Indirectly      |   |  |  |  |  |  |  |
|   | Total           |   |  |  |  |  |  |  |

Signature of the authorised  
Official : \_\_\_\_\_

Name (in block letters) : \_\_\_\_\_

Designation : \_\_\_\_\_

Place:

Date:

<sup>®</sup> Please indicate the number of persons recruited by your company during the financial year for which the return is being submitted. Under “Directly”, indicate the number of persons on the roll of your company, whereas under “Indirectly”, indicate the number of persons otherwise engaged by your company during the year.

**TERMS AND CONDITIONS FOR TRANSFER OF SHARES / CONVERTIBLE  
DEBENTURES, BY WAY OF SALE, FROM A PERSON RESIDENT IN INDIA TO A  
PERSON RESIDENT OUTSIDE INDIA AND FROM A PERSON RESIDENT  
OUTSIDE INDIA TO A PERSON RESIDENT IN INDIA**

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

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

**2. Pricing Guidelines**

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

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

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

Price of shares transferred by way of sale by resident to a non-resident shall not be less than

- (a) the ruling market price, in case the shares are listed on stock exchange,
- (b) fair valuation of shares done by a Chartered Accountant as per the guidelines issued by the erstwhile Controller of Capital Issues, in case of unlisted shares.

The price per share arrived at should be certified by a Chartered Accountant.

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

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

- (a) Where the shares of an Indian company are traded on stock exchange,

- i) the sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock exchange;
- ii) if the transfer is other than that referred to in clause (i), the price shall be arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 per cent variation. Where, however, the shares are being sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the objective of passing management control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by up to a ceiling of 25 per cent over the price arrived at as above,

**(b)** Where the shares of an Indian company are not listed on stock exchange or are thinly traded,

- i) if the consideration payable for the transfer does not exceed Rs.20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares; and
- ii) if the amount of consideration payable for the transfer exceeds Rs.20 lakh per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:
  - A) a price based on earning per share (EPS linked to the Price Earning (P/E) multiple, or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher,or
  - B) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen based trading systemor
  - C) where the shares are not listed on any stock exchange, at a price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a Merchant Banker in Category 1 registered with Securities and Exchange Board of India.

**Explanation:**

i) A share is considered as thinly traded if the annualized trading turnover in that share, on main stock exchanges in India, during the six calendar months preceding the month in which application is made, is less than 2 percent (by number of shares) of the listed stock.

ii) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares issued and paid up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares issued and paid up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.

iii) For computing the price based on Earning Per Share, the earning per share as per the latest balance sheet of the company shall be used in conjunction with the average Price Earning Multiple of Bombay Stock Exchange National Index for the calendar month preceding the month in which application is made and Price Earning shall be discounted by 40 per cent.

**3. Responsibilities / Obligations of the parties**

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

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

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

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

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

## **5. Documentation**

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

### **5.1 For sale of shares by a person resident in India**

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
- iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category- wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. Copy of Broker's note if sale is made on Stock Exchange
- vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.

- vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

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

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

## **6. Reporting requirements**

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

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

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

books.

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

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

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

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

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

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

**DOCUMENTS TO BE SUBMITTED BY A PERSON RESIDENT IN INDIA FOR  
TRANSFER OF SHARES TO A PERSON RESIDENT OUTSIDE INDIA BY WAY OF  
GIFT**

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI for listed companies and unlisted companies, respectively.
- vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.<sup>22</sup>
- viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year.**

**DEFINITION OF "RELATIVE" AS GIVEN IN SECTION 6 OF COMPANIES ACT, 1956**

A person shall be deemed to be a relative of another, if, and only if:

- (a) they are members of a Hindu undivided family ; or
- (b) they are husband and wife ; or
- (c) the one is related to the other in the manner indicated in Schedule IA (as under)

- 1. Father.
- 2. Mother (including step-mother).
- 3. Son (including stepson).
- 4. Son's wife.
- 5. Daughter (including step-daughter).
- 6. Father's father.
- 7. Father's mother.
- 8. Mother's mother.
- 9. Mother's father.
- 10. Son's son.
- 11. Son's son's wife.
- 12. Son's daughter.
- 13. Son's daughter's husband.
- 14. Daughter's husband.
- 15. Daughter's son.
- 16. Daughter's son's wife.
- 17. Daughter's daughter.
- 18. Daughter's daughter's husband.
- 19. Brother (including step-brother).
- 20. Brother's wife.
- 21. Sister (including step-sister).
- 22. Sister's husband.

\*\*\*\*\*

**REPORT BY THE INDIAN COMPANY RECEIVING AMOUNT OF CONSIDERATION  
FOR ISSUE OF SHARES / CONVERTIBLE DEBENTURES UNDER THE FDI  
SCHEME**

*( To be filed by the company through its Authorised Dealer Category – I bank, with the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the company making the declaration is situated, not later than 30 days from the date of receipt of the amount of consideration, as specified in para 9 (I) (A) of Schedule I to Notification No. FEMA 20/2000- RB dated May 3, 2000 )*

Permanent Account  
Number (PAN) of the  
investee company given  
by the IT Department

| <b>No.</b> | <b>Particulars</b>   | <b>(In Block Letters)</b>        |                  |
|------------|--|----------------------------------|------------------|
| 1.         | Name of the Indian company   |                                  |                  |
|            | Address of the Registered Office   |                                  |                  |
|            | Fax  |                                  |                  |
|            | Telephone  |                                  |                  |
|            | e-mail   |                                  |                  |
| 2          | <b>Details of the foreign investor/ collaborator</b>   |                                  |                  |
|            | Name   |                                  |                  |
|            | Address  |                                  |                  |
| Country    |  |                                  |                  |
| 3.         | Date of receipt of funds   |                                  |                  |
| 4.         | Amount   | In foreign currency              | In Indian Rupees |
|            |  |                                  |                  |
| 5.         | Whether investment is under Automatic Route or Approval Route<br><br>If Approval Route, give details (ref. no. of approval and date) | Automatic Route / Approval Route |                  |

|    |  |  |
|----|--|--|
| 6. | Name of the AD through whom the remittance is received |  |
| 7. | Address of the AD                                      |  |

A Copy of the FIRC evidencing the receipt of consideration for issue of shares/convertible debentures as above is enclosed.

|  |                                  |
|--|----------------------------------|
| (Authorised signatory of the investee company) | (Authorised signatory of the AD) |
| (Stamp)  | (Stamp)                          |

**FOR USE OF THE RESERVE BANK ONLY:**

**Unique Identification Number for the remittance received:**

**KNOW YOUR CUSTOMER (KYC) FORM IN RESPECT OF THE NON-RESIDENT INVESTOR**

|  |  |
|--|--|
| Registered Name of the Remitter / Investor<br>(Name, if the investor is an Individual) |  |
| Registration Number (Unique Identification Number* in case remitter is an Individual)  |  |
| Registered Address (Permanent Address if remitter Individual)                          |  |
| Name of the Remitter's Bank  |  |
| Remitter's Bank Account No.  |  |
| Period of banking relationship with the remitter                                       |  |

\* Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter as prevalent in the remitter's country

***We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident investor.***

(Signature of the Authorised Official  
of the AD bank receiving the remittance)

Date :

Stamp :

Place:

| <b>FORM FC-TRS</b>   |   |
|--|---|
| <b>Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures by way of sale from resident to non resident / non- resident to resident</b>   |   |
| (to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt)   |   |
| <p><b>The following documents are enclosed</b></p> <p><i>For sale of shares / compulsorily and mandatorily convertible preference shares / debentures by a person resident in India</i></p> <ul style="list-style-type: none"> <li>i. Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document.</li> <li>ii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India.</li> <li>iii. Certificate indicating fair value of shares from a Chartered Accountant.</li> <li>iv. Copy of Broker's note if sale is made on Stock Exchange.</li> <li>v. Declaration from the buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.</li> <li>vi. Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached.</li> </ul> <p><i>Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures by a person resident outside India</i></p> <ul style="list-style-type: none"> <li>vii. If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis.</li> <li>viii. No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Account.</li> </ul> |   |
| <b>1</b>   | <b>Name of the company</b>                            |
|  | Address (including e-mail , telephone Number, Fax no) |
|  | Activity  |
|  | NIC Code No.  |

|   |   |  |
|---|---|--|
| 2 | <b>Whether FDI is allowed under Automatic route</b>   |  |
|   | Sectoral Cap under FDI Policy   |  |
| 3 | <b>Nature of transaction</b>  | Transfer from resident to non resident / |
|   | <i>(Strike out whichever is not applicable)</i>   | Transfer from non resident to resident   |
| 4 | <b>Name of the buyer</b>  |  |
|   | <b>Constitution / Nature of the investing Entity</b><br>Specify whether   |  |
|   | <ol style="list-style-type: none"> <li>1. Individual</li> <li>2. Company</li> <li>3. FII</li> <li>4. FVCI</li> <li>5. Foreign Trust</li> <li>6. Private Equity Fund</li> <li>7. Pension/ Provident Fund</li> <li>8. Sovereign Wealth Fund (SWF<sup>II</sup>)</li> <li>9. Partnership / Proprietorship firm</li> <li>10. Financial Institution</li> <li>11. NRIs / PIOs</li> <li>12. others</li> </ol> |  |
|   | Date and Place of Incorporation   |  |
|   | Address of the buyer <i>(including e-mail, telephone number. Fax no.)</i>   |  |
| 5 | <b>Name of the seller</b>   |  |
|   | <b>Constitution / Nature of the disinvesting entity</b><br>Specify whether  |  |
|   | <ol style="list-style-type: none"> <li>1. Individual</li> <li>2. Company</li> <li>3. FII</li> <li>4. FVCI</li> <li>5. Foreign Trust</li> <li>6. Private Equity Fund</li> <li>7. Pension/ Provident Fund</li> <li>8. Sovereign Wealth Fund (SWF*)</li> </ol>   |  |

|          |   |   |                          |  |                                       |
|----------|---|---|--------------------------|--|---------------------------------------|
|          | 9. Partnership/<br>Proprietorship firm<br>10. Financial Institution<br>11. NRIs/PIOs<br>12. others                                  |   |                          |  |                                       |
|          | Date and Place of Incorporation   |   |                          |  |                                       |
|          | Address of the seller ( <i>including e-mail, telephone Number Fax no</i> )  |   |                          |  |                                       |
| <b>6</b> | <b>Particulars of earlier Reserve Bank / FIPB approvals</b>   |   |                          |  |                                       |
| <b>7</b> | <b>Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures to be transferred</b> |   |                          |  |                                       |
|          | <i>Date of the transaction</i>  | <i>Number of shares CMCPS / debenture</i> | <i>Face value in Rs.</i> | <i>Negotiated Price for the transfer**in Rs.</i> | <i>Amount of consideration in Rs.</i> |
|          |   |   |                          |  |                                       |
| <b>8</b> | <b>Foreign Investments in the company</b>   |   | <i>No. of shares</i>     | <i>Percentage</i>                                |                                       |
|          |   | Before the transfer                       |                          |  |                                       |
|          |   | After the transfer                        |                          |  |                                       |
| <b>9</b> | <b>Where the shares / CMCPS / debentures are listed on Stock Exchange</b>   |   |                          |  |                                       |
|          | <i>Name of the Stock exchange</i>   |   |                          |  |                                       |
|          | <i>Price Quoted on the Stock exchange</i>   |   |                          |  |                                       |
|          | <b>Where the shares / CMCPS / debentures are Unlisted</b>   |   |                          |  |                                       |
|          | <i>Price as per Valuation guidelines*</i>   |   |                          |  |                                       |
|          | <i>Price as per Chartered Accountants<br/>* / ** Valuation report (CA Certificate to be attached)</i>                               |   |                          |  |                                       |

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

### **Declaration by the transferor / transferee**

**I / We hereby declare that :**

- i. The particulars given above are true and correct to the best of my/our knowledge

and belief.

- ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.
- iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures of a company engaged in financial services sector or a sector where general permission is not available.
- iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.

**Signature of the Declarant or his duly  
authorised agent**

**Date:**

**Note:**

*In respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures from resident to non resident the declaration has to be signed by the non resident buyer, and in respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures from non-resident to resident the declaration has to be signed by the non-resident seller.*

**Certificate by the AD Branch**

It is certified that the application is complete in all respects.

The receipt /payment for the transaction are in accordance with FEMA Regulations / Reserve Bank guidelines.

**Date:**

Signature  
Name and Designation of the Officer  
Name of the AD Branch  
AD Branch Code

**FORM DR**

[Refer to paragraph 4(2) of Schedule 1]

**Return to be filed by an Indian Company who has arranged issue of GDR/ADR**

**Instructions :** The Form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai.

1. Name of the Company
2. Address of Registered Office
3. Address for Correspondence
4. Existing Business (please give the NIC Code of the activity in which the company is predominantly engaged)
5. Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof
6. Name and address of the Depository abroad
7. Name and address of the Lead Manager/ Investment/Merchant Banker
8. Name and address of the Sub-Managers to the issue
9. Name and address of the Indian Custodians
10. Details of FIPB approval (please quote the relevant NIC Code if the GDRs/ADRs are being issued under the Automatic Route)
11. Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details
12. Details of the Equity Capital

|                                       | <u>Before Issue</u> | <u>After Issue</u> |
|---------------------------------------|---------------------|--------------------|
| (a) Authorised Capital                |                     |                    |
| (b) Issued and Paid-up Capital        |                     |                    |
| (i) Held by persons Resident in India |                     |                    |

(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)

(iii) Held by NRIs/PIOs/OCBs

(iv) Held by FIIs

**Total Equity held by non-residents**

(c) Percentage of equity held by non-residents to total paid-up capital

13 Whether issue was on private placement basis. If yes, please give details of the investors and GDRs/ADRs issued to each of them

14 Number of GDRs/ADRs issued

15 Ratio of GDRs/ADRs to underlying shares

16 Issue Related Expenses

(a) Fee paid/payable to Merchant Bankers/Lead Manager

(i) Amount (in US\$)

(ii) Amount as percentage to the total issue

(b) Other expenses

17 Whether funds are kept abroad. If yes, name and address of the bank

18 Details of the listing arrangement

Name of Stock Exchange

Date of commencement of trading

19 The date on which GDRs/ADRs issue was launched

20 Amount raised (in US \$)

21 Amount repatriated (in US \$)

Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with.

Sd/-  
Chartered Accountant

Sd/-  
Authorised Signatory of the Company

**FORM DR - QUARTERLY**

[Refer to paragraph 4(3) of Schedule 1]

(to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)

1. Name of the Company
2. Address
3. GDR/ADR issue launched on
4. Total No. of GDRs/ADRs issued
5. Total amount raised
6. Total interest earned till end of quarter
7. Issue expenses and commission etc.
8. Amount repatriated
9. Balance kept abroad - Details
  - (i) Banks Deposits
  - (ii) Treasury Bills
  - (iii) Others (please specify)
10. No. of GDRs/ADRs still outstanding
11. Company's share price at the end of the quarter
12. GDRs/ADRs price quoted on overseas stock exchange as at the end of the quarter

Certified that the funds raised through GDRs/ADRs have not been invested in stock market or real estate.

Sd/-  
Chartered Accountant

Sd/-  
Authorised Signatory of the Company

