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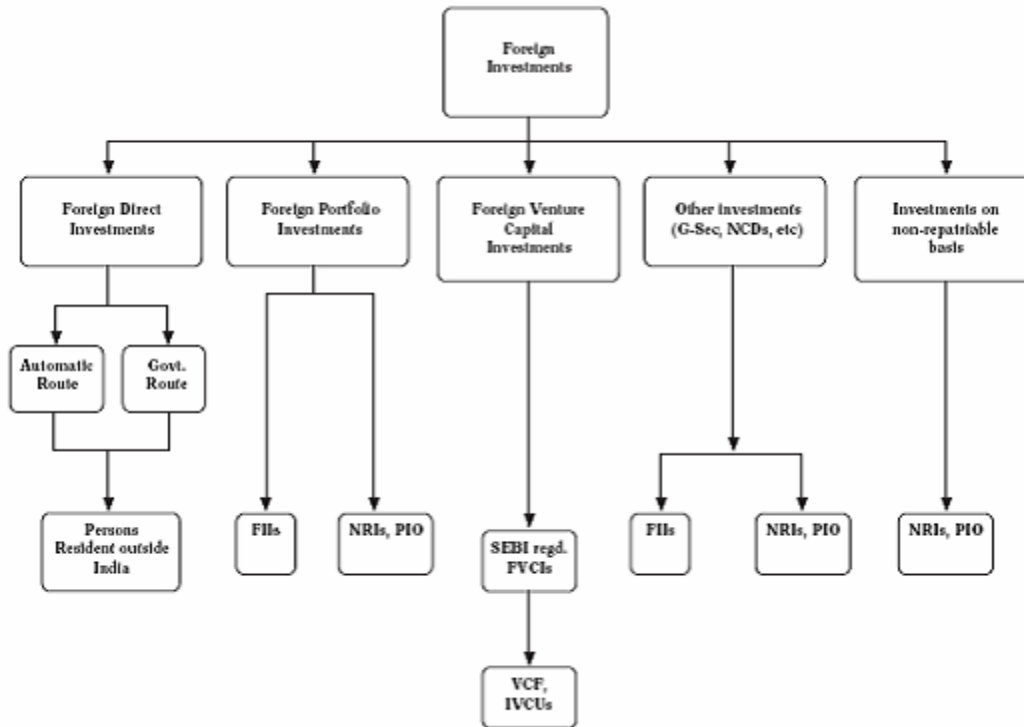
MASTER CIRCULAR ON FOREIGN INVESTMENT IN INDIA

Foreign investment in India is governed by sub-section (3) of section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. The regulatory framework and instructions issued by the Reserve Bank have been compiled in this Master Circular. The list of underlying circulars/notifications is furnished in Appendix. In addition to the above, this Master Circular also covers the area of 'Investment in capital of partnership firms or proprietary concern' which is regulated in terms of section 2(h) and section 47 of Foreign Exchange Management Act, 1999, read with Notification No. FEMA 24/2000-RB dated May 3, 2000.

2. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2012 and be replaced by an updated Master Circular on the subject.

PART I

FOREIGN INVESTMENTS IN INDIA—SCHEMATIC REPRESENTATION:



SECTION I

FOREIGN DIRECT INVESTMENT

1. Foreign Direct Investment in India

Foreign Direct Investment (FDI) in India is :

- undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a “Consolidated FDI Policy Circular” on an half yearly basis on March 31 and September 30 of each year (since 2010) elaborating the policy and the process in respect of FDI in India. The latest “Consolidated FDI Policy Circular” dated March 31,2011 is available in public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department of Industrial Policy and Promotion -

http://dipp.nic.in/Fdi_Circular/FDI_Circular_012011_31March2011.pdf.

- governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999. FEMA Regulations which prescribe amongst other things the mode of investments i.e. issue or acquisition of shares/convertible debentures and preference shares, manner of receipt of funds, pricing guidelines and reporting of the investments to the Reserve Bank.

The Reserve Bank has issued Notification No. FEMA 20/2000-RB dated May 3, 2000 which contains the Regulations in this regard. This Notification has been amended from time to time.

2. Entry routes for investments in India

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully preference shares¹ of an Indian company by non-residents through two routes:

u **Automatic Route:** Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

u **Government Route:** Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) for the investment.

3. Eligibility for Investment in India

(i) A person resident outside India² (other than a citizen of Pakistan) or an entity incorporated outside India, (other than an entity incorporated in Pakistan) can invest in India, subject to the FDI Policy of the Government of India. A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI Scheme, with the prior approval of the FIPB.

(ii) NRIs, resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme 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.

(iii) Overseas Corporate Bodies (OCBs) have been de-recognised as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under adverse notice of the Reserve Bank can make fresh investments under the FDI Scheme as incorporated non-resident entities, with the prior approval of the Government of India, if the investment is through the Government Route; and with the prior approval of the Reserve Bank, if the investment is through the Automatic Route. However, before making any fresh FDI under the FDI scheme an erstwhile OCB should through their AD bank take a one time certification from RBI that it is not in the adverse list being maintained with the Reserve Bank of India.

ADs should also ensure that OCBs do not maintain any account other than NRO current account in line with the instructions as per A.P. (DIR Series) Circular No. 14 dated September 16, 2003. Further, this NRO account should not be used for any fresh investments in India. Any fresh request for opening of NRO current account for

liquidating previous investment held on non-repatriation basis should be forwarded by the AD bank to Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai. However, ADs should not close other category of accounts (NRE/FCNR/NRO) for OCBs which are in the adverse list of the Reserve Bank of India. These accounts are to be maintained by the respective AD banks in the frozen status.

4. Type of instruments

(i) Indian companies can issue equity shares, fully and mandatorily convertible debentures and fully and mandatorily convertible preference shares subject to the pricing guidelines/valuation norms and reporting requirements amongst other requirements as prescribed under FEMA Regulations.

(ii) Issue of other types of preference shares such as, non-convertible, optionally convertible or partially convertible, have to be in accordance with the guidelines applicable for External Commercial Borrowings (ECBs).

(iii) As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy.

5. Pricing guidelines³

u **Fresh issue of shares:** Price of fresh shares issued to persons resident outside India under the FDI Scheme, shall be :

l on the basis of SEBI guidelines in case of listed companies.

l not less than fair value of shares determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow Method (DCF) in case of unlisted companies.

The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical know how fee/royalty or conversion of ECB into equity or capitalization of pre-incorporation expenses/import payables (with prior approval of Government).

u **Preferential allotment:** In case of issue of shares on preferential allotment, the issue price shall not be less than the price as applicable to transfer of shares from resident to non-resident.

u **Issue of shares by SEZs against import of capital goods:** In this case, the share valuation has to be done by a Committee consisting of Development Commissioner and the appropriate Customs officials.

u **Right Shares:** The price of shares offered on rights basis by the Indian company to non-resident shareholders shall be;

(i) In the case of shares of a company **listed** on a recognised stock exchange in India, at a price as determined by the company.

(ii) In the case of shares of a company **not listed** on a recognised stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to the resident shareholders.

u **Acquisition ⁴/transfer of existing shares (private arrangement).** The acquisition of existing shares from Resident to Non-resident (*i.e.* to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII) would be at a:

(a) negotiated price for shares of companies listed on a recognized stock exchange in India which shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines, as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares. The price per share arrived at should be certified by a SEBI registered Category I Merchant Banker or a Chartered Accountant.

(b) negotiated price for shares of companies which are not listed on a recognized stock exchange in India which shall not be less than the fair value to be determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow (DCF) method.

Further, transfer of existing shares by Non-resident (*i.e.* by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) to Resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.

u The pricing of shares/convertible debentures/preference shares should be decided/determined upfront at the time of issue of the instruments. The price for the convertible instruments can also be a determined based on the conversion formula which has to be determined/fixed upfront, however the price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments, in accordance with the extant FEMA regulations.

6. Mode of Payment

An Indian company issuing shares/convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares/convertible debentures by:

(i) inward remittance through normal banking channels.

(ii) debit to NRE/FCNR account of a person concerned maintained with an AD category I bank.

(iii) conversion of royalty/lump sum/technical know how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.

(iv) conversion of import payables/pre-incorporation expenses/share swap can be treated as consideration for issue of shares with the approval of FIPB.

(v) debit to non-interest bearing Escrow account⁵ in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/FCNR(B)/Escrow account the amount of consideration shall be refunded. Further, the Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund/allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

7. Foreign Investment limits, Prohibited Sectors and investment in MSEs

(a) Foreign Investment Limits

The details of the entry route applicable and the maximum permissible foreign investment/sectoral cap in an Indian Company is determined by the sector in which it is operating. The details of the entry route applicable along with the sectoral cap for foreign investment in various sectors are given in Annex 1.

(b) Investments in Micro and Small Enterprise (MSE)

A company which is reckoned as Micro and Small Enterprise (MSE) (earlier Small Scale Industrial Unit) in terms of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, including an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park, and which is not engaged in any activity/sector mentioned in Annex 2 may issue shares or convertible debentures to a person resident outside India (other than a resident of Pakistan and to a resident of Bangladesh under approval route), subject to the prescribed limits as per FDI Policy, in accordance with the Entry Routes and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.

Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for the MSE sector may issue shares to persons

resident outside India (other than a resident/entity of Pakistan and to a resident/entity of Bangladesh with prior approval FIPB), to the extent of 24 per cent of its paid-up capital or sectoral cap whichever is lower. Issue of shares in excess of 24 per cent of paid-up capital shall require prior approval of the FIPB of the Government of India and shall be in compliance with the terms and conditions of such approval.

(c) Prohibition on foreign investment in India

(i) **Foreign investment in any form** is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities⁶ :

- (a) Business of chit fund, or
- (b) Nidhi company, or
- (c) Agricultural or plantation activities, or
- (d) Real estate business, or construction of farm houses, or
- (e) Trading in Transferable Development Rights (TDRs).

(ii) It is clarified that “real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

It is further clarified that partnership firms/proprietorship concerns having investments as per FEMA regulations are not allowed to engage in print media sector.

(iii) In addition to the above, **Foreign investment in the form of FDI** is also prohibited in certain sectors such as (Annex-2)⁷:

- (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) Activities/sectors not opened to private sector investment,

(i) Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea Plantations),

(j) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

Note:

1. 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.

2. Foreign investment in Trusts other than investment by SEBI registered FVCIs in domestic VCF under Schedule 6 to FEMA Notification No. 20 is not permitted.

8. Modes of Investment under Foreign Direct Investment Scheme.

Foreign Direct Investment in India can be done through following modes:

8.A. Issuance of fresh shares by the company

An Indian company may issue fresh shares/convertible debentures under the FDI Scheme to a person resident outside India (who is eligible for investment in India) subject to compliance with the extant FDI policy and the FEMA Regulation.

8.B Acquisition by way of transfer of existing shares by person resident outside India

8 B.I 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 in the following manner:

a. Non Resident to Non-Resident (Sale/Gift): A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).

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

c. Non Resident to Resident :

a. Gift: A person resident outside India can transfer any security to a person resident in India by way of gift.

b. Sale: 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 pricing, reporting and other guidelines as given in Annex – 3.

d. Resident to Non-resident (Sale): 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 sector (*i.e.* Banks, NBFC, Insurance, Asset Reconstruction Companies (ARCs), Credit Information Companies(CICs), infrastructure companies in the securities market *viz.* Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the pricing, reporting and other guidelines given in Annex – 3. However, this general permission is not available in case of transfer of shares/debentures by gift from a Resident to a Non-Resident/Non-Resident Indian.

e. Non-resident on the Stock Exchange: 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.

f. 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 of the Reserve Bank, 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 for transfer of shares transactions indicated at Para 8.B.II and for all the transactions as indicated above which are not meeting the pricing guidelines.

g. AD Category – I banks have been given general permission to open and maintain non-interest bearing Escrow account in Indian Rupees in India on behalf of residents and non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions. It has also been decided to permit SEBI authorised Depository Participant, to open and maintain, without approval of the Reserve Bank, Escrow account for securities as stated in para 9 (b).

h. The reporting guidelines are given in Section V of the Master Circular.

8.B.II Prior permission of the Reserve Bank in certain cases for acquisition/transfer of security

(i) The following instances of transfer of shares or convertible debentures from residents to non-residents by way of sale requires Reserve Bank approval:

(a) Transfer of shares or convertible debentures of an Indian company engaged in 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.).

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

(c) The activity of the Indian company whose securities 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 shares or convertible debentures where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank is required. Further, in case approval is granted for the transaction, the same should be reported in Form FC-TRS to the AD Category – I bank, within 60 days from the date of receipt of the full and final amount of consideration.

(ii) The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from the Reserve Bank:

(a) Transfer of shares of companies engaged in sectors falling under the Government Route.

(b) Transfer of shares resulting in foreign investments in the Indian company, breaching the sectoral cap applicable.

(iii) A person resident in India, who intends to transfer any security, by way of gift to a person resident outside India, has to obtain prior approval from the Reserve Bank⁸. While forwarding the application to the Reserve Bank for approval for transfer of shares by way of gift, the documents mentioned in Annex-4 should be enclosed. The Reserve Bank considers the following factors while processing such applications:

(a) The proposed transferee is eligible to hold such security 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-5.

(e) 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**.

(f) Such other conditions as stipulated by the Reserve Bank in public interest from time to time.

(iv) Transfer of shares from NRI to NR or NR to NRI requires the prior approval of the Reserve Bank of India.

8.C. Issue of Rights/Bonus shares

An Indian company may issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, reporting requirements, etc. Further, such issue of bonus/rights shares have to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements), Regulations 2009, etc.

u **Issue of Right shares to OCBs:** OCBs have been de-recognised as a class of investors with effect from September 16, 2003. Therefore, companies desiring to issue rights share to such erstwhile OCBs will have to take specific prior permission from the Reserve Bank⁹. As such, entitlement of rights share is not automatically available to OCBs. However, bonus shares can be issued to erstwhile OCBs (which are not in the adverse list of the Reserve Bank of India) without prior approval of the Reserve Bank, provided that the OCB is not in the adverse list of RBI.

u **Additional allocation of rights share by residents to non-residents :** Existing non-resident shareholders are allowed to apply for issue of additional shares/convertible debentures/preference shares over and above their rights share entitlements. The investee company can allot the additional rights shares 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.

8.D. Issue of shares under Employees Stock Option Scheme (ESOPs)

An Indian Company may issue shares under 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. Citizens of Bangladesh can invest with the prior approval of the FIPB. The face value of the shares to be allotted under the scheme to the non-resident employees should not exceed 5 per cent of the paid-up capital of the issuing company. Shares under ESOPs can be issued directly or through a Trust subject to the

condition that the scheme has been drawn in terms of the relevant regulations issued by the SEBI.

8.E Conversion of ECB/Lump sum Fee/Royalty/Import of capital goods by SEZs in to Equity/Import payables/Pre-incorporation expenses

(i) Indian companies have been granted general permission for *conversion of External Commercial Borrowings (ECB) into shares/convertible debentures*, 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's 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 determined as per SEBI regulations for listed company or DCF method for unlisted company;

(d) Compliance with the requirements prescribed under any other statute and regulation in force;

(e) The conversion facility is available for ECBs availed under the Automatic or Approval 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 RBI/SEBI and compliance with applicable tax laws.

(iii) *Units in Special Economic Zones (SEZs) are permitted to issue equity shares to non-residents against import of capital goods* subject to the valuation done by a Committee consisting of Development Commissioner and the appropriate Customs officials.

(iv) *Issue of equity shares against Import of capital goods/machinery/equipment (including second hand machinery)*, is allowed under the Government route, subject to the compliance with the following conditions:

(a) The import of capital goods, machineries, etc., made by a resident in India, is in accordance with the Export/Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the Foreign Exchange Management Act (FEMA), 1999 relating to imports issued by the Reserve Bank;

(b) There is an independent valuation of the capital goods/machineries/equipments (including second-hand machineries) by a third party entity, preferably by an independent

valuer from the country of import along with production of copies of documents/certificates issued by the customs authorities towards assessment of the fair-value of such imports;

(c) The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and

(d) All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.

(v) *Issue of equity shares against* Pre-operative/pre-incorporation expenses (including payment of rent etc.) is allowed under the Government route, subject to compliance with the following conditions :

(a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.

(b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.

(c) Payments being made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be allowed.

(d) The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

(vi) Issue of shares to a non-resident against shares swap¹⁰ *i.e.*, in lieu for the consideration which has to be paid for shares acquired in the overseas company, can be done with the approval of FIPB.

(vii) The reporting guidelines are given in Section V of the Master Circular.

8.F. Issue of shares by Indian Companies under ADR/GDR

Depository Receipts (DRs) are negotiable securities 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, London, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

(i) Indian companies can raise foreign currency resources abroad through the issue of 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 thereunder from time to time.

(ii) A company can issue ADRs/GDRs, if it is eligible to issue shares to person resident outside India under the FDI Scheme. 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.

(iv) 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 utilisation of the proceeds, the Indian company can invest the funds in:-

(a) Deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch, IBCA or Moody's, etc. and such rating not being less than the rating stipulated by the Reserve Bank from time to time for the purpose;

(b) Deposits with branch/es of Indian Authorised Dealers outside India; and

(c) Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less.

(v) 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.

(vi) The ADR/GDR proceeds can be utilised 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.

(vii) 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 Bank¹¹ from time to time, as applicable to all shareholders exercising voting rights.

(viii) Erstwhile OCBs which are not eligible to invest in India and entities prohibited to buy/sell or deal in securities by SEBI will not be eligible to subscribe to ADRs/GDRs issued by Indian companies.

(ix) The pricing of ADR/GDR issues including sponsored ADRs/GDRs 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.

(x) **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.

(xi) **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 is 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.

(xii) **The reporting guidelines for ADR/GDR are given in Section V of the Master Circular.**

9. Foreign Currency Account and Escrow Account

(a) Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a Foreign Currency Account for *bona fide* business purpose only with the prior approval of the Reserve Bank.

(b) AD Category – I banks have been given general permission to open and maintain non-interest bearing Escrow account in Indian Rupees in India on behalf of residents and non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions. It has also been decided to permit SEBI authorised Depository Participant, to open and maintain, without approval of the Reserve Bank, Escrow account for securities. The Escrow account would also be subject to the terms and conditions as stipulated in A.P. (DIR Series) Circular No. 58 dated May 2, 2011. Further, the Escrow account would be maintained with AD Category I bank or SEBI Authorised Depository Participant (in case of securities account). These facilities will be applicable to both, issue of fresh shares to the non-residents as well as

transfer of shares to the non-residents as well as transfer of shares from/to the non-residents.

10. Acquisition of shares under Scheme of Merger/Amalgamation

Mergers and 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/amalgamation. Once the scheme of merger 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 (refer para 7(c)).

11. Remittance of sale proceeds

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.

12. 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:

(i) No objection or Tax clearance certificate from Income Tax Department for the remittance.

(ii) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

(iii) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.

(iv) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is 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.

13. Pledge of Shares

(a) A person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowings, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer. The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that :

(i) the loan agreement has been signed by both the lender and the borrower,

(ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and

(iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank:

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

(i) the period of such pledge shall be co-terminus with the maturity of the underlying ECB;

(ii) in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;

(iii) the Statutory Auditor has certified that the borrowing company will utilized/has utilized the proceeds of the ECB for the permitted end use/s only.

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

(a) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;

(b) submission of a declaration/annual certificate from the statutory auditor of the investee company that the loan proceeds will be/have been utilized for the declared purpose;

(c) the Indian company has to follow the relevant SEBI disclosure norms; and

(d) pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.

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

(a) loan is availed of only from an overseas bank;

(b) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;

(c) overseas investment should not result in any capital inflow into India;

(d) in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and

(e) submission of a declaration/annual certificate from a Chartered Accountant/Certified Public Accountant of the non-resident borrower that the loan proceeds will be/have been utilized for the declared purpose.

SECTION II

FOREIGN INVESTMENTS UNDER PORTFOLIO INVESTMENT SCHEME (PIS)

1. Entities

(i) **Foreign Institutional Investors** (FIIs) registered with SEBI are eligible to purchase shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme (PIS).

(iii) **NRIs** are eligible to purchase shares and convertible debentures issued by Indian companies under PIS, if they have been permitted by the designated branch of any AD Category – I bank (which has been authorised by the Reserve Bank to administer the PIS).

(iii) **SEBI approved sub accounts of FIIs**(sub accounts) have general permission to invest under the PIS.

(iv) OCBs are not permitted to invest under the PIS with effect from November 29, 2001, in India. Further, the OCBs which have already made investments under the PIS are allowed to continue holding such shares/convertible debentures till such time these are sold on the stock exchange.

2. Investment in listed Indian companies

A. FIIs

(a) **An Individual FII/SEBI approved sub-accounts** of FIIs can invest up to a maximum of 10 per cent of the total paid-up capital or 10 per cent of the paid-up value of each series of convertible debentures issued by the Indian company. The 10 per cent limit would include shares held by SEBI registered **FII/SEBI approved sub-accounts** of FII under the PIS (by way of purchases made through a registered broker on a recognized stock exchange in India or by way of offer/private placement) as well as shares acquired by SEBI registered FII under the FDI scheme.

(b) **Total holdings of all FIIs/SEBI approved sub-accounts of FIIs** put together shall not exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. This limit of 24 per cent can be increased to the sectoral cap/statutory limit, as applicable to the Indian company concerned, by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior approval from the Reserve Bank.

B. NRIs

(a) NRIs are allowed to invest in shares of listed Indian companies in recognised Stock Exchanges under the PIS.

(b) NRIs can invest through designated ADs, on repatriation and non-repatriation basis under PIS route up to 5 per cent of the paid-up capital/paid-up value of each series of debentures of listed Indian companies.

(c) The aggregate paid-up value of shares/convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company/paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior approval from the Reserve Bank.

C. Prohibition on investments by FIIs and NRIs

u FIIs are not permitted to invest in the capital of an Asset Reconstruction Company.

u **Both FIIs and NRIs** are not allowed to invest in any company which is engaged or proposes to engage in the following activities:

(i) Business of chit fund, or

(ii) Nidhi company, or

- (iii) Agricultural or plantation activities, or
- (iv) Real estate business* or construction of farm houses, or
- (v) Trading in Transferable Development Rights (TDRs).

3. Accounts with AD Category – I banks

A. FIIs

FIIs/sub-accounts can open a non-interest bearing Foreign Currency Account and/or a **single non-interest bearing** Special Non-Resident Rupee Account(SNRR A/c) with an AD Category – I bank, for the purpose of investment under the PIS. They can transfer sums from the Foreign Currency Account to the **single** SNRR A/c for making genuine investments in securities in terms of the SEBI (FII) Regulations, 1995, as amended from time to time. The sums may be transferred from Foreign Currency Account to SNRR A/c at the prevailing market rate and the AD Category – I bank may transfer repatriable proceeds (after payment of tax) from the SNRR A/c to the Foreign Currency account. The SNRR A/c may be credited with the sale proceeds of shares/debentures, dated Government securities, Treasury Bills, etc. Such credits are allowed, subject to the condition that the AD Category – I bank should obtain confirmation from the investee company/FII concerned that tax at source, wherever necessary, has been deducted from the gross amount of dividend/interest payable/approved income to the share/debenture/Government securities holder at the applicable rate, in accordance with the Income Tax Act. The SNRR A/c may be debited for purchase of shares/debentures, dated Government securities, Treasury Bills, etc., and for payment of fees to applicant FIIs' local Chartered Accountant/Tax Consultant where such fees constitute an integral part of their investment process.

B. NRIs

NRIs can approach the designated branch of any AD Category – I bank (which has been authorised by the Reserve Bank to administer the PIS) for permission to open a single designated account (NRE/NRO account) under the PIS for routing investments.

Payment for purchase of shares and/or debentures on **repatriation basis** has to be made by way of inward remittance of foreign exchange through normal banking channels or out of funds held in NRE/FCNR(B) account maintained in India. If the shares are purchased on **non-repatriation basis**, the NRIs can also utilise their funds in NRO account in addition to the above.

4. Exchange Traded Derivative Contracts

A. FIIs

u SEBI registered FIIs are allowed to trade in all exchange traded derivative contracts¹² approved by RBI/SEBI on recognised Stock Exchanges in India subject to the position limits and margin requirements as prescribed by RBI/SEBI from time to time as well as the stipulations regarding collateral securities as directed by the Reserve Bank from time to time.

u The SEBI registered FII/sub-account may open a separate account under their SNRR A/c through which all receipts and payments pertaining to trading/investment in exchange traded derivative contracts will be made (including initial margin and mark to market settlement, transaction charges, brokerage, etc.).

u Further, transfer of funds between the SNRR A/c and the separate account maintained for the purpose of trading in exchange traded derivative contracts can be freely made.

u However, repatriation of the Rupee amount will be made only through their SNRR A/c subject to payment of relevant taxes. The AD Category – I banks have to keep proper records of the above mentioned separate account and submit them to the Reserve Bank as and when required.

B. NRIs

NRIs are allowed to invest in Exchange Traded Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India on non-repatriation basis, subject to the limits prescribed by SEBI. Such investments will not be eligible for repatriation benefits.

5. Collateral for FIIs

(a) Derivative Segment: FIIs are allowed to offer foreign sovereign securities with AAA rating as collateral to the recognised Stock Exchanges in India in addition to the cash for their transactions in derivatives segment of the market. SEBI approved clearing corporations of stock exchanges and their clearing members are allowed to undertake the following transactions subject to the guidelines issued from time to time by SEBI in this regard:

a. to open and maintain demat accounts with foreign depositories and to acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIs;

b. to remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and

c. to liquidate such foreign sovereign securities, if the need arises.

Clearing Corporations have to report, on a monthly basis, the balances of foreign sovereign securities, held by them as non-cash collaterals of their clearing members to the

Reserve Bank¹³. The report should be submitted by the 10th of the following month to which it relates.

(b) Equity Segment:

The above guidelines are also applicable to the equity segment. Further, Domestic Government Securities (subject to the overall limits specified by the SEBI from time to time; the current limit being **USD 10 billion**) also can be kept as collateral to the recognised Stock Exchanges in India in addition to the cash for their transactions in cash segment of the market. However, cross-margining of Government Securities (placed as margins by the FIIs for their transactions in the cash segment of the market) shall not be allowed between the cash and the derivative segments of the market.

Custodian banks are allowed to issue Irrevocable Payment Commitments (IPCs) in favour of Stock Exchanges/Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the PIS. Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time and instructions issued *vide* DBOD Circular no. DBOD.Dir.BC. 46/13.03.00/2010-11 dated September 30, 2010.

6. Short Selling by FIIs

A. FIIs

FIIs registered with SEBI and SEBI approved sub-accounts of FIIs are permitted to short sell, lend and borrow equity shares of Indian companies. Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed by the Reserve Bank and the SEBI/other regulatory agencies from time to time. The permission is subject to the following conditions:

(a) Short selling of equity shares by FIIs shall not be permitted for equity shares of Indian companies which are in the ban list and/or caution list of the Reserve Bank.

(b) Borrowing of equity shares by FIIs shall only be for the purpose of delivery into short sales.

(c) The margin/collateral shall be maintained by FIIs only in the form of cash. No interest shall be paid to the FII on such margin/collateral.

B. NRIs

The NRI investor has to take delivery of the shares purchased and give delivery of shares sold. Short Selling is not permitted.

7. Private placement with FIIs

SEBI registered FIIs have been permitted to purchase shares/convertible debentures of an Indian company through offer/private placement, subject to total FII investment *viz.* PIS & FDI (private placement/offer) being within the individual FII/sub-account investment limit 10 per cent and all FIIs/sub-accounts put together – 24 per cent of the paid-up capital of the Indian company or to the sectoral limits, as applicable. Indian company is permitted to issue such shares provided that:

(a) in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents; and

(b) in the case of issue by private placement, the issue price should be determined as per the pricing guidelines stipulated under the FDI scheme.

8. Transfer of shares acquired under PIS under private arrangement

Shares purchased by NRIs and FIIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without prior approval of the Reserve Bank. However, NRIs can transfer shares acquired under PIS to their relatives as defined in section 6 of Companies Act, 1956 or to a charitable trust duly registered under the laws in India.

9. Monitoring of investment position by RBI and AD banks

The Reserve Bank monitors the investment position of FIIs/NRIs in listed Indian companies, reported by Custodian/designated AD banks, on a daily basis, in Forms LEC (FII) and LEC (NRI). However, the respective designated bank (NRIs)/Custodian bank (FIIs) should monitor:

- u the individual limit of NRI/FII to ensure that it does not breach the prescribed limits.
- u that the trades are not undertaken in the prohibited sectors when the same is reported to them.
- u that all trades are reported to them by monitoring the transactions in the designated account.

The onus of reporting of FII and NRI transactions lies on the designated custodian/AD bank, depository participant as well as the FII/NRI making these investments.

10. Caution List

When the total holdings of FIIs/NRIs under the PIS reach the limit of 2 per cent below the sectoral cap, the Reserve Bank will issue a notice to all designated AD Category – I banks cautioning that any further purchases of shares of the particular Indian company by FIIs/NRIs will require prior approval of the Reserve Bank. The Reserve Bank gives case-

by-case approvals to FIIs/NRIs for purchase of shares of companies included in the Caution List. This is done on a first-come-first-served basis.

11. Ban List

Once the shareholding by FIIs/NRIs reaches the overall ceiling/sectoral cap/statutory limit, the Reserve Bank places the company in the Ban List. Once a company is placed in the Ban List, no FII/NRI can purchase the shares of the company under the PIS.

SECTION – III

FOREIGN VENTURE CAPITAL INVESTMENTS

Investments by Foreign Venture Capital Investor

(i) A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from the Reserve Bank can invest in Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a scheme floated by such IVCFs subject to the condition that the domestic VCF is registered with SEBI. These investments by SEBI registered FVCI, would be subject to the respective SEBI regulations and FEMA regulations and sector specific caps of FDI.

An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI. A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.

(ii) FVCIs can purchase equity/equity linked instruments/debt/debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes/funds set up by a VCF. At the time of granting approval, the Reserve Bank permits the FVCI to open a non-interest bearing Foreign Currency Account and/or a non-interest bearing Special Non-Resident Rupee Account with a designated branch of an AD Category – I bank, subject to certain terms and conditions.

(iii) The purchase/sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller. A SEBI registered FVCI can only acquire securities (as given in (ii), above by way of public offer or private placement by the issuer of such securities and not by way of private arrangement with a third party.

(iv) AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.

(v) The investments made by FVCI under the Schedule I of Notification No. FEMA 20/2000- RB dated May 3, 2000 as amended from time to time would be governed by the norms as stated therein.

SECTION – IV

OTHER FOREIGN INVESTMENTS

1. Purchase of other securities by NRIs

(i) On non-repatriation basis

(a) NRIs can purchase shares/convertible debentures issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR(B)/NRO account maintained with the AD Category – I bank.

(b) NRI can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

NRI can also invest in non-convertible debentures both on repatriation basis and on non-repatriation basis, which has been issued by an Indian Company subject to the other terms and conditions stated under Notification No. FEMA 4/2000-RB dated May 3,2000 (as amended from time to time).

(ii) On repatriation basis

An NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

2. Indian Depository Receipts (IDR)

Indian Depository Receipts (IDRs) can be issued by non-resident companies in India subject to and under the terms and conditions of Companies (Issue of Depository Receipts) Rules, 2004 and subsequent amendment made thereto and the SEBI (DIP) Guidelines, 2000, as amended from time to time. These IDRs can be issued in India through Domestic Depository to residents in India as well as SEBI registered FIIs and

NRIs. In case of raising of funds through issuances of IDRs by financial/banking companies having presence in India, either through a branch or subsidiary, the approval of the sectoral regulator(s) should be obtained before the issuance of IDRs.

(a) The FEMA Regulations shall not be applicable to persons resident in India as defined under section 2(v) of FEMA, 1999, for investing in IDRs and subsequent transfer arising out of transaction on a recognized stock exchange in India.

(b) Foreign Institutional Investors (FIIs) including SEBI approved sub-accounts of the FIIs, registered with SEBI and Non-Resident Indians (NRIs) may invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified *vide* Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. Further, NRIs are allowed to invest in the IDRs out of funds held in their NRE/FCNR(B) account, maintained with an Authorised Dealer/Authorised bank.

(c) Automatic fungibility of IDRs is not permitted.

(d) IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.

(e) At the time of redemption/conversion of IDRs into underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified *vide* Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time. Accordingly, the following guidelines shall be followed, on redemption of IDRs:

i. Listed Indian companies may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulations 6B and 7 of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.

ii. Indian Mutual Funds, registered with SEBI may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulation 6C of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.

iii. Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.

iv. The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs.

(f) The proceeds of the issue of IDRs shall be immediately repatriated outside India by the eligible companies issuing such IDRs. The IDRs issued should be denominated in Indian Rupees.

3. Purchase of other securities by FIIs

FIIs can buy on repatriation basis dated Government securities/treasury bills, listed non-convertible debentures/bonds, commercial papers issued by Indian companies and units of domestic mutual funds, Security receipts issued by Asset Reconstruction Companies and Perpetual Debt Instruments eligible for inclusion in as Tier I capital (as defined by DBOD, RBI) and Debt capital instruments as upper Tier II Capital (as defined by DBOD, RBI) issued by banks in India to augment their capital either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India subject to the following terms and conditions:

(a) The total holding by a single FII in each tranche of scheme of Security Receipts shall not exceed 10% of the issue and total holdings of all FIIs put together shall not exceed 49% of the paid up value of each tranche of scheme/issue of Security Receipts issued by the ARCs. Further, sub-account of FIIs are not allowed to invest in the Security Receipts issued by ARCs.

(b) The total holding by a single FII/sub-account in each issue of Perpetual Debt Instruments (Tier I) shall not exceed 10% of the issue and total holdings of all FIIs/sub-account put together shall not exceed 49% of the paid up value of each issue of Perpetual Debt Instruments.

(c) Purchase of debt instruments including Upper Tier II instruments by FIIs are subject to limits notified by SEBI and the Reserve Bank from time to time. The present limit for investment in Corporate Debt Instruments like non-convertible debentures/bonds by FIIs is USD 40 billion¹⁴, which constitutes of the:

- u limit of USD 25 billion for investment in such non-convertible debentures/bonds issued by listed and unlisted companies in the infrastructure sector (as defined in the ECB guidelines), with a residual maturity of 5 years and a minimum lock in period of 3 years.

- u limit of USD 15 billion for investment in permissible listed corporate debt instruments without any locking period and residual maturity restrictions.

(d) The present limit of investment by SEBI registered FIIs in Government Securities is USD 10 billion which constitutes of :

- u limit of USD 5 billion for Government Securities with the residual maturity of 5 years.

- u limit of USD 5 billion for Government securities without any residual maturity restrictions.

4. Investment by Multilateral Development Banks (MDBs)

A Multilateral Development Bank (MDB) which is specifically permitted by the Government of India to float rupee bonds in India can purchase Government dated securities.

5. Foreign Investment in Tier I and Tier II instruments issued by banks in India

(i) FIIs registered with SEBI and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions:

a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII should not exceed the limit of 10 per cent of each issue.

b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 per cent of each issue.

c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.

d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.

(ii) The issuing banks are required to ensure compliance with the conditions stipulated above at the time of issue. They are also required to comply with the guidelines issued by the Department of Banking Operations and Development (DBOD), Reserve Bank of India, from time to time.

(iii) The issue-wise details of the amount raised as Perpetual Debt Instruments qualifying for Tier I capital by the bank from FIIs/NRIs are required to be reported in the prescribed format within 30 days of the issue to the Reserve Bank¹⁵.

(iv) Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by SEBI for investment in corporate debt instruments. However, investment by FIIs in these instruments will be subject to a separate ceiling of USD 500 million.

(v) The details of the secondary market sales/purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

SECTION – V

REPORTING GUIDELINES FOR FOREIGN INVESTMENTS IN INDIA AS PER SECTIONS I AND II

1. Reporting of FDI¹⁶ for fresh issuance of shares

(i) Reporting of inflow

(a) The actual inflows on account of such issuance of shares shall be reported by the AD branch in the R-returns in the normal course.

(b) 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 through its AD Category I bank, not later than 30 days from the date of receipt in the Advance Reporting Form enclosed in Annex-6. Non-compliance with the above provision would be reckoned as a contravention under FEMA, 1999 and could attract penal provisions.

The Form can also be downloaded from the Reserve Bank's website <http://www.rbi.org.in/Scripts/BSViewFemaForms.aspx>.

(c) 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-7) 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.

(ii) Time frame within which shares have to be issued

The equity 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 equity 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 could attract penal provisions. In exceptional cases, refund/allotment of shares for the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank, on the merits of the case.

(iii) Reporting of issue of shares

(a) After issue of shares (including bonus and shares issued on rights basis and shares issued on conversion of stock option under ESOP scheme)/convertible debentures/convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in Annex – 8, through its AD Category I bank, not later than 30 days from the date of issue of shares. The Form can also be downloaded from the Reserve Bank's website http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.

(b) 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 Authorised Dealer of the company, who will forward it to the concerned Regional Office of the Reserve Bank. The following documents have to be submitted along with Part A:

(i) 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 AD banks in India evidencing receipt of amount of consideration.

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

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

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

2. Reporting of FDI for Transfer of shares route

(i) 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.

(ii) Reporting of transfer of shares between residents and non-residents and *vice-versa* is to be made in Form FC-TRS (enclosed in Annex – 9-i). 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.

(iii) 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 KYC check (Annex 9-ii) 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.**

(iv) The AD bank should scrutinise the transactions and on being satisfied about the transactions should certify the form FC-TRS as being in order.

(v) The AD bank 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 consolidate reporting in respect of all the transactions reported by their branches into two statements inflow and outflow statement. These statements (inflow and outflow) should be forwarded on a monthly basis 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. The bank should maintain the FC-TRS forms with it and should not forward the same to the Reserve Bank of India.

(vi) 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.

(vi) On receipt of statements from the AD bank, 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.

3. Reporting of conversion of ECB into equity

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

a. 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.

b. 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.

c. The SEZ unit issuing equity as mentioned in para (iii) above, should report the particulars of the shares issued in the Form FC-GPR.

4. Reporting of ESOPs for allotment of equity shares

The issuing company is required to report the details of issuance of ESOPs to its employees to the Regional Office concerned of the Reserve Bank, in plain paper reporting, within 30 days from the date of issue of ESOPs. Further, at the time of conversion of options into shares the Indian company has to ensure reporting to the Regional Office concerned of the Reserve Bank in form FC-GPR, within 30 days of allotment of such shares. However, provision with regard to advance reporting would not be applicable for such issuances.

5. Reporting of 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 in Annex -10, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the Form enclosed in Annex – 11, 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. Reporting of FII investments under PIS scheme

(i) **FII reporting:** The AD Category – I banks have to ensure that the FIIs registered with SEBI who are purchasing various securities (except derivative and IDRs) by debit to the Special Non-Resident Rupee Account should report all such transactions details (except derivative and IDRs) in the Form LEC (FII) to Foreign Exchange Department, Reserve Bank of India, Central Office by uploading the same to the ORFS web site (<https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp>). It would be the banks

responsibility to ensure that the data submitted to RBI is reconciled by periodically taking a FII holding report for their bank.

(iii) The Indian company which has issued shares to FIIs under the FDI Scheme (for which the payment has been received directly into company's account) and the Portfolio Investment Scheme (for which the payment has been received from FIIs' account maintained with an AD Category – I bank in India) should report these figures separately under item No. 5 of Form FC-GPR (Annex – 🤪(Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical/monitoring purposes.

7. Reporting of NRI investments under PIS scheme

The link office of the designated branch of an AD Category – I bank shall furnish to the Reserve Bank¹⁷, a report on a daily basis on PIS transactions undertaken by it, on behalf of NRIs. This report can be furnished on a floppy to the Reserve Bank and also uploaded directly on the OFRS web site (<https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp>). It would be the banks responsibility to ensure that the data submitted to RBI is reconciled by periodically taking a NRI holding report for their bank.

PART II

INVESTMENT IN PARTNERSHIP FIRM/PROPRIETARY CONCERN

1. Investment in Partnership Firm/Proprietary Concern

A Non-Resident Indian¹⁸ (NRI) or a Person of Indian Origin¹⁹ (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:

- i.* Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorised Dealers/Authorised banks.
- ii.* The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business (*i.e.* dealing in land and immovable property with a view to earning profit or earning income therefrom) or print media sector.
- iii.* Amount invested shall not be eligible for repatriation outside India.

2. Investments with repatriation benefits

NRIs/PIO may seek prior permission of Reserve Bank²⁰ for investment in sole proprietorship concerns/partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.

3. 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 Bank²¹, 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.

4. Restictions

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 therefrom) or engaged in Print Media.

ANNEX – 1

[PART I, Section I, para 7(a)]

SECTOR – SPECIFIC POLICY FOR FOREIGN INVESTMENT

In the following sectors/activities, FDI up to the limit indicated below is allowed subject to other conditions as indicated. In Sectors/Activities not listed below, FDI is permitted up to 100 per cent on the automatic route subject to sectoral rules/regulations applicable.

<i>Sr. No.</i>	<i>Sector/Activity</i>	<i>FDI Cap/ Equity</i>	<i>Entry Route</i>	<i>Other conditions</i>
I	AGRICULTURE			
1.	Floriculture, Horticulture, Development and production of Seeds and planting material, Animal Husbandry, Pisciculture, Aquaculture, Cultivation of Vegetables & Mushrooms under controlled conditions and services related to agro and allied sectors.	100%	Automatic	—
	NB: Besides the above, FDI is not allowed in any other agricultural sector/activity			

2.	Tea Sector , including tea plantation	100%	FIPB	Subject to divestment of 26% equity in favour of Indian partner/Indian public within 5 years and prior approval of State Government concerned in case of any change in future land use.
	NB: Besides the above, FDI is not allowed in any other plantation sector/activity			
	INDUSTRY MINING			
3.	Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 (www.mines.nic.in)
4.	Coal & Lignite mining for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalisation) Act, 1973.	100%	Automatic	Subject to provisions of Coal Mines (Nationalisation) Act, 1973.(www.coal.nic.in)
5.	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.	100%	FIPB	Subject to sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957 and the following conditions -
	NB: FDI will not be allowed in mining of “prescribed substances” listed in Government of India			<i>i.</i> value addition facilities are set up within India along with transfer of technology; <i>ii.</i> disposal of tailings during the mineral

	Notification No. S.O. 61(E) dated 18.1.2006 issued by the Department of Atomic Energy.			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.
	MANUFACTURING			
6.	Alcohol-Distillation & Brewing	100%	Automatic	Subject to license by appropriate authority.
7.	Coffee & Rubber processing & warehousing	100%	Automatic	—
8.	Defence production	26%	FIPB	Subject to licensing under Industries (Development & Regulation) Act, 1951 and guidelines on FDI in production of arms and ammunition.
9.	Hazardous chemicals, viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and diisocyanates of hydrocarbon.	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral Regulations.
10.	Industrial explosives - Manufacture	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and Regulations under Explosives Act, 1898
11.	Drugs and Pharmaceuticals including those involving use of	100%	Automatic	—

	recombinant DNA technology			
	POWER			
12.	Power including generation (except Atomic energy); transmission, distribution and Power trading.	100%	Automatic	Subject to provisions of the Electricity Act, 2003 (www.powermin.nic.in)
FDI is not permitted for 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			
	CIVIL AVIATION SECTOR			
13.	Airports-			
a.	Greenfield projects	100%	Automatic	Subject to sectoral Regulations notified by Ministry of Civil Aviation (www.civilaviation.nic.in)
b.	Existing projects	100%	FIPB beyond 74%	Subject to sectoral Regulations notified by Ministry of Civil Aviation (www.civilaviation.nic.in)
14.	Air Transport Services including Domestic Scheduled Passenger Airlines; Non-Schedules Airlines; Chartered Airlines; Cargo Airlines; Helicopter and Seaplane Services			
a.	Scheduled Air Transport Services/Domestic Scheduled Passenger Airline	49% – FDI; 100% – for NRIs investment	Automatic	Subject to no direct or indirect participation by foreign airlines and Sectoral Regulations. (www.civilaviation.nic.in)
b.	Non-Scheduled Air Transport Service/Non-Scheduled airlines, Chartered airlines, and Cargo airlines	74%- FDI 100%- for NRIs investment	Automatic	Subject to no direct or indirect participation by foreign airlines in Non-Scheduled and Chartered airlines. Foreign airlines are allowed to participate

				in the equity of companies operating Cargo airlines. Also subject to sectoral Regulations. (www.civilaviation.nic.in)
c.	Helicopter Services/Seaplane services requiring DGCA approval	100%	Automatic	Foreign airlines are allowed to participate in the equity of companies operating Helicopter and seaplane airlines. Also subject to sectoral Regulations. (www.civilaviation.nic.in)
15. Other services under Civil Aviation Sector				
a.	Ground Handling Services	74% - FDI 100% - for NRIs investment	Automatic	Subject to sectoral Regulations and security clearance.
b.	Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic	—
16.	Asset Reconstruction Companies	49% (only FDI)	FIPB	Investment by FIIs are not permitted in the equity capital of ARC. However, FII registered with SEBI can invest in Security Receipts issued by ARCs registered with Reserve Bank of India. FIIs can invest upto 49% 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% of the issue.
				Where any individual investment exceeds

				10% of the equity, provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. Sub-accounts of FIIs are not allowed to invest in the Security Receipts of ARCs. (www.finmin.nic.in)
17.	Banking -	74%	Automatic	Subject to guidelines for setting up branches/subsidiaries of foreign banks issued by RBI. (www.rbi.org.in)
(a)	Private sector	(FDI+FII) Within this limit, FII investment not to exceed 49%		
(b)	Banking – Public sector	20%		FDI and PI in nationalized banks are subject to the overall statutory limits of 20% as provided under Section 3(2D) of the Banking Companies (Acquisition and Transfer of Undertaking) Acts, 1970/80. The same ceiling would also apply in respect of such investments in State Bank of India and its Associate banks.
		(FDI + FII)		
18.	Broadcasting			
a.	FM Radio	FDI +FII investment up to 20%	FIPB	Subject to guidelines notified by Ministry of Information & Broadcasting. (www.mib.nic.in)
b.	Cable network	49% (FDI+FII)	FIPB	Subject to Cable Television Network Rules (1994), notified

				by Ministry of Information & Broadcasting. (www.mib.nic.in)
c.	Direct-To-Home	49% (FDI+FII). Within this limit, FDI component not to exceed 20%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. (www.mib.nic.in)
d.	Setting up hardware facilities such as up-linking, HUB, etc.	49% (FDI+FII)	FIPB	Subject to Up-linking Policy notified by Ministry of Information & Broadcasting. (www.mib.nic.in)
e.	Up-linking a News & Current Affairs TV Channel	26% (FDI+FII)	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. (www.mib.nic.in)
f.	Up-linking a Non-news & Current Affairs TV Channel	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. (www.mib.nic.in)
19.	Commodity Exchanges	49% (FDI+FII) FDI – 26% FII – 23%	FIPB	FII purchases shall be restricted to secondary market only. Subject to regulations specified by concerned Regulators.
20.	Development of 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,	100%	Automatic	Subject to conditions vide para 5.23 of Consolidated FDI policy of Government of India including: <i>a.</i> Minimum capitalization of US\$ 10 million for wholly owned subsidiaries and US\$ 5 million for joint venture. The funds would have to be brought within six months of

	city and regional level infrastructure)		<p>commencement of business of the company.</p> <p><i>b.</i> Minimum area to be developed under each project- 10 hectares in case of development of serviced housing plots; and built-up area of 50,000 sq. mts. in case of construction development project; and any of the above in case of a combination project.</p>
	NB: FDI is not allowed in Real Estate Business		<p><i>c.</i> Original Investment cannot be repatriated before a period of three years from the completion of the minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of Government through the FIPB.</p>
			<p><i>d.</i> At least 50% of the project must be developed within the 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” would mean where roads, water supply, street lighting, drainage, sewerage, and</p>

				other conveniences, as applicable under the prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the local body/service agency before he would be allowed to dispose of services housing plots.
				[Note : The above conditions are not applicable for
				1: For investment by NRIs,
				2: For investment in SEZs, Hotels & Hospitals.
21.	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	100%	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. (www.indiapost.gov.in)
22.	Infrastructure companies in securities markets namely, Stock Exchanges, Depositories and Clearing Corporations	49% (FDI+FII) FDI - 26% FII - 23%	FIPB	FII purchases shall be restricted to secondary market. Subject to regulations specified by concerned Regulators.
23.	Credit Information Companies(CIC)	49% (FDI+FII) Within this limit, FII investment not to exceed 24%	FIPB (& regulatory clearance from RBI)	FII purchases shall be restricted to secondary market. Foreign Investment in CIC will be subject to Credit Information Companies (Regulation) Act, 2005. Subject to regulations specified by concerned

				Regulators.
24.	Industrial Parks both setting up and in established Industrial Parks	100%	Automatic	<p>Conditions in para 5.23 of Consolidated FDI policy of Government of India applicable for construction development projects would not apply provided the Industrial Parks meet with the under-mentioned conditions-</p> <p><i>i.</i> it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area and ;</p> <p><i>ii.</i> the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.</p>
25.	Insurance	26%	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority (www.irda.nic.in)
26.	Investing companies in infrastructure/ services sector (except telecom sector)	100%	FIPB	<p>Where there is a prescribed cap for foreign investment, only the direct investment will be considered for the prescribed cap and foreign investment in an investing company will not be set off against this cap provided the foreign direct investment in such investing company does not exceed 49% and the</p>

				management of the investing company is with the Indian owners.
27. Non-Banking Finance Companies				
(i)	Merchant banking	100%	Automatic	Subject to:
(ii)	Underwriting			a. Minimum capitalization norms for fund based NBFCs - US\$ 0.5 million to be brought upfront for FDI up to 51%; US\$ 5 million to be brought upfront for FDI above 51% and up to 75%; and US\$ 50 million out of which US\$ 7.5 million to be brought upfront and the balance in 24 months, for FDI beyond 75% and up to 100%.
(iii)	Portfolio Management Services			
(iv)	Investment Advisory Services			
(v)	Financial Consultancy			
(vi)	Stock Broking			
(vii)	Asset Management			
(viii)	Venture Capital			
(ix)	Custodial 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			

				condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in US\$ 50 million without any restriction on number of operating subsidiaries without bringing additional capital.
(xviii)	Rural credit			d. Joint venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow.
				e. Compliance with the guidelines of the RBI.
*Credit card business includes issuance, sales, marketing and design of various payment products such as credit cards, debit cards, stored value cards, smart card, value added cards, etc.				
28. Petroleum & Natural Gas sector				
a.	Refining	49% in case of PSUs. 100% in case of private companies	FIPB (in case of PSUs) Automatic (in case of private companies)	Subject to Sectoral policy and no divestment or dilution of domestic equity in the existing PSUs. (www.petroleum.nic.in)
b.	Other than refining and including market study and formulation; investment/financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.	100%	Automatic	Subject to sectoral Regulations issued by Ministry of Petroleum & Natural Gas. (www.petroleum.nic.in)
29. Print Media				

<i>a.</i>	Publishing of newspaper and periodicals dealing with news and current affairs	26%	FIPB	Subject to guidelines notified by Ministry of Information & Broadcasting. (www.mib.nic.in)
<i>b.</i>	Publishing of scientific magazines/specialty journals/periodicals	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. (www.mib.nic.in)
30.	Telecommunications			
<i>a.</i>	Basic and 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 telecom services	74% (Including FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity in Indian promoters/ Investing Company)	Automatic up to 49%. FIPB beyond 49%.	Subject to guidelines vide para 5.38 of Consolidated FDI policy of Government of India.
<i>b.</i>	ISP with gateways, radio-paging, end-to-end bandwidth.	74%	Automatic up to 49%. FIPB beyond 49%.	Subject to licensing and security requirements notified by the Department of Telecommunications. (www.dotindia.com)
<i>c.</i>	(<i>a</i>) ISP without gateway; (<i>b</i>) Infrastructure provider providing dark fibre, right of way, duct space, tower (Category I); (<i>c</i>) electronic mail and voice mail.	100%	Automatic up to 49%. FIPB beyond 49%.	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required.

				(www.dotindia.com)
<i>d.</i>	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements. (www.dotindia.com)
31. Trading				
<i>a.</i>	Wholesale/cash & carry trading	100%	Automatic	
<i>b.</i>	Trading for Exports	100%	Automatic	
<i>c.</i>	Trading of items sourced from small scale sector	100%	FIPB	
<i>d.</i>	Test marketing of such items for which a company has approval for manufacture	100%	FIPB	Subject to the condition that the test marketing approval will be for a period of two years and investment in setting up manufacturing facilities commences simultaneously with test marketing.
<i>e.</i>	Single Brand Product retailing	51%	FIPB	Subject to para 5.39.3 of Consolidated FDI policy of Government of India
32. Satellites -	Establishment and operation	74%	FIPB	Subject to sectoral guidelines issued by Department of Space/ISRO. (www.isro.org)
33. Special Economic Zones and Free Trade Warehousing Zones	covering setting up of these Zones and setting up units in the Zones	100%	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. (www.sezindia.nic.in)
34	Venture Capital Fund and Venture Capital Undertaking	-	Automatic	SEBI registered FVCI are allowed to invest in domestic venture capital undertakings and domestic venture capital funds through the automatic route subject to the SEBI regulations and sector

				specific caps on FDI.
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Note : All the above sector/activities are governed by the respective Press Notes/Releases issued by the Government of India from time to time

ANNEX - 2

[PART I, SECTION I, PARA 7(c)(iii)]

(A) All Activities/Sectors would require prior approval of the Government of India for FDI in accordance with the FDI policy issued by Government of India from time to time.

(B) Sectors prohibited for FDI

- I. Retail Trading (except single brand product retailing)
- II. Atomic Energy
- III. Lottery Business including Government/private lottery, online lotteries etc.
- IV. Gambling and Betting including casinos etc.
- V. Business of chit fund
- VI. Nidhi Company
- VII. Trading in Transferable Development Rights (TDRs)
- VIII. Activities/sector not opened to private sector investment
- IX. Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (Other than Tea Plantations)
- X. Real estate business, or construction of farm houses.
- XI. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco or of tobacco substitutes.

Note:

1. 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.

2. Foreign investment in Trusts other than investment by SEBI registered FVCIs in domestic VCF is not permitted.

ANNEX – 3

[PART I, SECTION I, PARA 8(b)]

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

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

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

2. 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.

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

3.1 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 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.

3.2. 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.

3.3 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.

4. 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:

4.1 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.

4.2 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 to 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.

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

Compliance is also to be ensured of the pricing and the reporting guidelines as stated under para 5 (Section I) and para 2 (Section V) respectively.

ANNEX- 4

[PART I, SECTION I, PARA 8 (b) II (iii)]

Documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift

- i.* Name and address of the transferor (donor) and the transferee (donee).
- ii.* Relationship between the transferor and the transferee.
- iii.* Reasons for making the gift.
- iv.* In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v.* In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi.* In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by

Securities & Exchange Board of India or DCF method for listed companies and unlisted companies, respectively.

vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.²²

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.**

ANNEX – 5

(PART I, SECTION I, PARA 8 (b) II (iii))

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.

ANNEX – 6

[PART I, SECTION V, PARA 1 (i)]

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	
No.	Particulars
	(In Block Letters)

1.	Name of the Indian company									
	Address of the Registered Office									
	Fax									
	Telephone									
	e-mail									
2	Details of the foreign investor/collaborator									
	Name									
	Address									
	Country									
3.	Date of receipt of funds									
4.	Amount	<table border="1"> <tr> <td></td> <td>In foreign currency</td> <td>In Indian Rupees</td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table>		In foreign currency	In Indian Rupees					
	In foreign currency	In Indian Rupees								
5.	Whether investment is under Automatic Route or Approval Route	Automatic Route/Approval Route								
	If Approval Route, give details (ref. No. of approval and date)									
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:**

[PART I, SECTION V, PARA 1(I)]

Know Your Customer (KYC) Form in respect of the non-resident investor

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

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

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

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

Date :

Place:

Stamp :

ANNEX – 8

[PART I, SECTION V, PARA 1 (iii)]

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 IT Department		
Date of issue of shares/convertible debentures		<input type="text"/>
No.	Particulars	(In Block Letters)
1.	Name	
	Address of the Registered Office	
	State	
	Registration No. given by Registrar of Companies	
	Whether existing company or new company (strike off whichever is not applicable)	Existing company/New company
	If existing company, give registration number allotted by RBI for FDI, if any	
	Telephone	
	Fax	
	e-mail	
2.	Description of the main business activity	
	NIC Code	
	Location of the project and NIC code for the district where the project is located	
	Percentage of FDI allowed as per FDI policy	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable)	Automatic Route/Approval Route
3	Details of the foreign investor/collaborator*.	
	Name	

	Address							
	Country							
	Constitution/Nature of the investing Entity							
	[Specify whether							
	1. Individual							
	2. Company							
	3. FII							
	4. FVCI							
	5. Foreign Trust							
	6. Private Equity Fund							
	7. Pension/Provident Fund							
	8. Sovereign Wealth Fund (SWF) ²³							
	9. Partnership/Proprietorship Firm							
	10. Financial Institution							
	11. NRIs/PIO							
	12. Others (please specify)]							
	Date of incorporation							
4	Particulars of Shares/Convertible Debentures Issued							
(a)	Nature and date of issue							
	<i>Nature of issue</i>	<i>Date of issue</i>	<i>Number of shares/ convertible debentures</i>					
01	IPO/FPO							
02	Preferential allotment/private placement							
03	Rights							
04	Bonus							
05	Conversion of ECB							
06	Conversion of royalty (including lump sum payments)							
07	Conversion against import of capital goods by units in SEZ							
08	ESOPs							
09	Share Swap							
10	Others (please specify)							
	Total							
(b)	Type of security issued							
	No.	Nature of security	Number	Maturity	Face value	Premium	Issue Price	Amount of

								per share	inflow*
	01	Equity							
	02	Compulsorily Convertible Debentures							
	03	Compulsorily Convertible Preference shares							
	04	Others (please specify)							
		Total							

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

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

(c)	Break up of premium	Amount
	Control Premium	
	Non competition fee	
	Others@	
	Total	
@ please specify the nature		
(d)	Total inflow (in Rupees) on account of issue of shares/convertible debentures to non-residents (including premium, if any) vide	
	(i) Remittance through AD:	
	(ii) Debit to NRE/FCNR A/c with Bank_____	
	(iii) Others (please specify)	
	Date of reporting of (i) and (ii) above to RBI under Para 9(1) A of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.	
(e)	Disclosure of fair value of shares issued**	

	We are a listed company and the market value of a share as on date of the issue is*	
	We are an un-listed company and the fair value of a share is*	

** *before issue of shares*

**(Please indicate as applicable)*

5. Post issue pattern of shareholding

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

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY:

(Delete whichever is not applicable and authenticate)

We hereby declare that:

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

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

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

OR

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

For the purpose of the 'same' field, 4 digit NIC 1987 code would be relevant.

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

OR

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

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

OR

Shares issued are bonus.

OR

Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of demerger 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

4. We enclose the following documents in compliance with Paragraph 9(1)(B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

- (i) A certificate from our Company Secretary certifying that
 - (a) all the requirements of the Companies Act, 1956 have been complied with;
 - (b) terms and conditions of the Government approval, if any, have been complied with;
 - (c) the company is eligible to issue shares under these Regulations; and
 - (d) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.
- (ii) A certificate from Statutory Auditors/SEBI registered Category I Merchant Banker/Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

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

	R																		
	-																		
	-																		
	-																		
	R																		

(Signature :
of the
Applicant)

*
(Name in :
Block
Letters)

(Designati :
on of the
signatory)

Place:

Date:

[PART I, SECTION V, PARA 2]

Form FC-TRS		
Declaration regarding transfer of shares/compulsorily and mandatorily convertible preference shares (CMCPS)/debentures by way of sale from resident to non-resident/non-resident to resident		
(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)		
The following documents are enclosed		
<i>For sale of shares/compulsorily and mandatorily convertible preference shares/debentures by a person resident in India</i>		
<ul style="list-style-type: none"> <i>i.</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. <i>ii.</i> The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India. <i>iii.</i> Certificate indicating fair value of shares from a Chartered Accountant. <i>iv.</i> Copy of Broker's note if sale is made on Stock Exchange. <i>v.</i> 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. <i>vi.</i> Declaration from the FII/sub-account to the effect that the individual FII/Sub-account ceiling as prescribed has not been breached. 		
<i>Additional documents in respect of sale of shares/compulsorily and mandatorily convertible preference shares/debentures by a person resident outside India</i>		
<ul style="list-style-type: none"> <i>vii.</i> If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis. <i>viii.</i> No Objection/Tax Clearance Certificate from Income Tax Authority/Chartered Account. 		
1	Name of the company	
	Address (including e-mail, telephone Number, Fax No.)	
	Activity	
	NIC Code No.	
2	Whether FDI is allowed under Automatic route	
	Sectoral Cap under FDI Policy	
3	Nature of transaction	Transfer from resident to non-resident/
	<i>(Strike out whichever is not applicable)</i>	Transfer from non-resident to resident
4	Name of the buyer	
	Constitution/Nature of the investing Entity	
	Specify whether	

	1. Individual				
	2. Company				
	3. FII				
	4. FVCI				
	5. Foreign Trust				
	6. Private Equity Fund				
	7. Pension/Provident Fund				
	8. Sovereign Wealth Fund (SWF#)				
	9. Partnership/Proprietorship firm				
	10. Financial Institution				
	11. NRIs/PIOs				
	12. Others				
	Date and Place of Incorporation				
	Address of the buyer (<i>including e-mail, telephone number. Fax No.</i>)				
5	Name of the seller				
	Constitution/Nature of the disinvesting entity				
	Specify whether				
	1. Individual				
	2. Company				
	3. FII				
	4. FVCI				
	5. Foreign Trust				
	6. Private Equity Fund				
	7. Pension/Provident Fund				
	8. Sovereign Wealth Fund (SWF#)				
	9. Partnership/Proprietorship firm				
	10. Financial Institution				
	11. NRIs/PIOs				
	12. Others				
	Date and Place of Incorporation				
	Address of the seller (<i>including e-mail, telephone Number Fax No.</i>)				
6	Particulars of earlier Reserve Bank/FIPB approvals				
7	Details regarding shares/compulsorily and mandatorily convertible preference shares (CMCPS)/debentures to be transferred				
	<i>Date of the transaction</i>	<i>Number of shares CMCPS/ debentures</i>	<i>Face value in Rs. transfer** in Rs.</i>	<i>Negotiated Price for the</i>	<i>Amount of consideration in Rs.</i>

8	Foreign Investments in the company		<i>No. of shares</i>	<i>Percentage</i>
		Before the transfer		
		After the transfer		
9	Where the shares/CMCPS/debentures are listed on Stock Exchange			
	<i>Name of the Stock exchange</i>			
	<i>Price Quoted on the Stock exchange</i>			
	Where the shares/CMCPS/debentures are Unlisted			
	<i>Price as per Valuation guidelines*</i>			
	<i>Price as per Chartered Accountants</i>			
	<i>*/** Valuation report (CA Certificate to be attached)</i>			
Declaration by the transferor/transferee				
I/We hereby declare that :				
<p><i>i.</i> The particulars given above are true and correct to the best of my/our knowledge and belief.</p> <p><i>ii.</i> 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.</p> <p><i>iii.</i> 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.</p> <p><i>iv.</i> The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.</p>				
Signature of the Declarant or his duly authorised agent				
Date:				
Note:				
<i>In respect of the transfer of shares/compulsorily and mandatorily convertible</i>				

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

Certificate by the AD Branch

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

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

Signature

Name and Designation of the Officer

Date: Name of the AD Branch

AD Branch Code

AD Branch Code

ANNEX 9-II

[PART I, SECTION V, PARA 2]

Know Your Customer (KYC) Form in respect of the non-resident investor	Registered Name of the Remitter/Investor (Name, if the investor is an Individual)
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the remitter	

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

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

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

Date:

Place:

Stamp

ANNEX 10

[PART I, SECTION V, PARA 5]

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

Before Issue

After Issue

(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 per cent 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

ANNEX 11

[PART I, SECTION I, PARA 29]

Form DR – Quarterly

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

Quarterly Return

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

1. Name of the Company
2. Address
3. GDR/ADR issue launched on
4. Total No. of GDRs/ADRs issued
5. Total amount raised
6. Total interest earned till end of quarter
7. Issue expenses and commission etc.
8. Amount repatriated
9. Balance kept abroad – Details
 - (i) Banks Deposits

(ii) Treasury Bills

(iii) Others (please specify)

10. No. of GDRs/ADRs still outstanding

11. Company's share price at the end of the quarter

12. GDRs/ADRs price quoted on overseas stock exchange as at the end of the quarter

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

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory
of the Company

ANNEX 12

APPENDIX

List of Important Circulars/Notifications which have been consolidated in the Master Circular on Foreign Investments/Acquisition of Immovable property in India/Establishment of Branch, Liaison and Project Offices in India and investments in proprietary/partnership firms

Notifications

Sl.No.	Notification	Date
1.	No. FEMA 32/2000-RB	December 26, 2000
2.	No. FEMA 35/2001-RB	February 16, 2001
3.	No. FEMA 41/2001-RB	March 2, 2001
4.	No. FEMA 45/2001-RB	September 20, 2001
5.	No. FEMA 46/2001-RB	November 29, 2001
6.	No. FEMA 50/2002-RB	February 20, 2002
7.	No. FEMA 55/2002-RB	March 7, 2002
8.	No. FEMA 76/2002-RB	November 12, 2002
9.	No. FEMA 85/2003-RB	January 17, 2003
10.	No. FEMA 94/2003-RB	June 18, 2003

11.	No. FEMA 100/2003-RB	October 3, 2003
12.	No. FEMA 101/2003-RB	October 3, 2003
13.	No. FEMA 106/2003-RB	October 27, 2003
14.	No. FEMA 108/2003-RB	January 1, 2004
15.	No. FEMA 111/2004-RB	March 6, 2004
16.	No.FEMA 118/2004-RB	June 29, 2004
17.	No.FEMA 122/2004-RB	August 30, 2004
18.	No.FEMA 125/2004-RB	November 27, 2004
19.	No.FEMA 130/2005-RB	March 17, 2005
20.	No.FEMA 131/2005-RB	March 17, 2005
21.	No.FEMA 138/2005-RB	July 22, 2005
22.	No. FEMA 136/2005-RB	July 19, 2005
23.	No. FEMA 137/2005- RB	July 22, 2005
24.	No.FEMA 138/2005-RB	July 22, 2005
25.	No. FEMA 149/2006-RB	June 9, 2006
26.	No. FEMA 153/2006-RB	May 31, 2007
27.	No. FEMA 167/2007-RB	October 23, 2007
28.	No. FEMA 170/2007-RB	November 13, 2007
29.	No. FEMA 179/2008-RB	August 22, 2008
30.	No. FEMA 202/2009-RB	November 10, 2009
31.	No. FEMA 205/2010-RB	April 7, 2010

Circulars

Sl. No.	Circular No.	Date
1.	A.P.DIR(Series) Circular No.14	September 26, 2000
2.	A.P.DIR(Series) Circular No.24	January 6, 2001
3.	A.P.DIR(Series) Circular No.26	February 22, 2001
4.	A.P.DIR(Series) Circular No.32	April 28, 2001
5.	A.P.DIR(Series) Circular No.13	November 29, 2001
6.	A.P.DIR(Series) Circular No.21	February 13, 2002
7.	A.P.DIR(Series) Circular No.29	March 11, 2002
8.	A.P.DIR(Series) Circular No.45	November 12, 2002
9.	A.P.DIR(Series) Circular No.52	November 23, 2002
10.	A.P.DIR(Series) Circular No.68	January 13, 2003
11.	A.P.DIR(Series) Circular No.69	January 13, 2003
12.	A.P.DIR(Series) Circular No.75	February 3, 2003
13.	A.P.DIR(Series) Circular No.88	March 27, 2003
14.	A.P.DIR(Series) Circular No.101	May 5, 2003
15.	A.P.DIR(Series) Circular No.10	August 20, 2003
16.	A.P.DIR(Series) Circular No.13	September 1, 2003

17.	A.P.DIR(Series) Circular No.14	September 16, 2003
18.	A.P.DIR(Series) Circular No.28	October 17, 2003
19.	A.P.DIR(Series) Circular No.35	November 14, 2003
20.	A.P.DIR(Series) Circular No.38	December 3, 2003
21.	A.P.DIR(Series) Circular No.39	December 3, 2003
22.	A.P.DIR(Series) Circular No.43	December 8, 2003
23.	A.P.DIR(Series) Circular No.44	December 8, 2003
24.	AP DIR (Series) Circular No.53	December 17, 2003
25.	A.P.DIR(Series) Circular No.54	December 20, 2003
26.	A.P.DIR(Series) Circular No.63	February 3, 2004
27.	A.P.DIR(Series) Circular No.67	February 6, 2004
28.	A.P.DIR(Series) Circular No.89	April 24, 2004
29.	A.P.DIR(Series) Circular No.11	September 13, 2004
30.	A.P.DIR(Series) Circular No.13	October 1, 2004
31.	A.P.DIR(Series) Circular No.15	October 1, 2004
32.	A.P.DIR(Series) Circular No.16	October 4, 2004
33.	A.P. DIR(Series) Circular No. 04	July 29, 2005
34.	A.P. DIR(Series) Circular No. 06	August 11, 2005
35.	A.P. DIR(Series) Circular No. 07	August 17, 2005
36.	A.P. DIR (Series) Circular No. 08	August 25, 2005
37.	A. P. DIR (Series) Circular No. 10	August 30, 2005
38.	A.P. DIR (Series) Circular No. 11	September 05, 2005
39.	A.P. DIR (Series) Circular No.16	November 11, 2005
40.	A.P. DIR (Series) Circular No. 24	January 25, 2006
41.	A.P. DIR (Series) Circular No. 4	July 28, 2006
42.	A.P. DIR (Series) Circular No. 12	November 16, 2006
43.	A.P. DIR (Series) Circular No. 25	December 22, 2006
44.	A.P. DIR (Series) Circular No. 32	February 8, 2007
45.	A.P. DIR (Series) Circular No. 40	April 20, 2007
46.	A.P. DIR (Series) Circular No. 62	May 24, 2007
47.	A.P. DIR (Series) Circular No. 65	May 31, 2007
48.	A.P. DIR (Series) Circular No. 73	June 8, 2007
49.	A.P. DIR (Series) Circular No. 74	June 8, 2007
50.	A.P. DIR (Series) Circular No. 2	July 19, 2007
51.	A.P. DIR (Series) Circular No. 20	December 14, 2007
52.	A.P. DIR (Series) Circular No. 22	December 19, 2007
53.	A.P. DIR (Series) Circular No. 23	December 31, 2007
54.	A.P. DIR (Series) Circular No. 40	April 28, 2008
55.	A.P. DIR (Series) Circular No. 41	April 28, 2008
56.	A.P. DIR (Series) Circular No. 44	May 30, 2008
57.	A.P. DIR (Series) Circular No. 25	October 17, 2008
58.	A.P. DIR (Series) Circular No. 63	April 22, 2009

59.	A.P. DIR (Series) Circular No. 5	July 22, 2009
60.	A.P. DIR (Series) Circular No. 47	April 12, 2010
61.	A.P. DIR (Series) Circular No. 49	May 4, 2010
62.	A.P. DIR (Series) Circular No. 13	September 14, 2010
63.	A.P. DIR (Series) Circular No. 45	March 15, 2011
64.	A.P. DIR (Series) Circular No. 54	April 29, 2011
65.	A.P. DIR (Series) Circular No. 55	April 29, 2011
66.	A.P. DIR (Series) Circular No. 57	May 2, 2011
67.	A.P. DIR (Series) Circular No. 58	May 2, 2011
68.	A.P. DIR (Series) Circular No. 74	June 30, 2011

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1. "Shares" mentioned in this **Master Circular** means equity shares, "preference shares" means fully and mandatorily convertible preference shares and "convertible debentures" means fully and mandatorily convertible debentures [cf. A. P. (DIR Series) Circular Nos. 73 & 74 dated June 8, 2007].

2. "Person resident in India" means—[As per FEMA Sec 2(v)]

(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;

u "person resident outside India" means a person who is not resident in India; [As per FEMA Sec 2(w)].

3. As per Notification No. FEMA 205/2010- RB dated April 7,2010.

4. A.P.(DIR Series) Circular No. 49 dated May 4, 2010.

5. Issued vide AP DIR Series Circular No 58 dated May 2, 2011, wherein Escrow account can also be used for received for amount of consideration and also for keeping securities to facilitate FDI transactions subject to the terms and conditions as given in the Circular. The account has to be maintained with the Authorized Dealer Category – I bank or an SEBI authorised Depository Participant. The guidelines in the circular are applicable for issue of fresh shares as well as for transfer of existing shares.

6. As per Notification no. FEMA 1/2000-RB dated May 3, 2000.

7. As per Notification no. FEMA 20/2000-RB dated May 3, 2000.

8. Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, 11th floor, Fort, Mumbai 400 001 along with the documents prescribed in Annex-4.

9. Applications to be addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai.

10. Regulation issued under Notification No. FEMA 120.

11. As per DBOD Circular No. DBOD.No.PSBD.7269/16.13.100/2006-07 dated February 5, 2007 bank raising fund through ADR/GDR mechanism, should give an undertaking to the Reserve Bank that they would not take cognizance to voting by the depository, should the depository vote in contravention of its agreement with the bank.

* "Real estate business" does not include construction of housing/commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, townships.

12. As per Notification no FMD.MSRG.No.39/02.04.003/2009-10 dated August 28,2008 FIIs registered with SEBI may purchase/sell Interest Rate Futures subject to the condition that total gross long position does not exceed their individual permissible limit

for investment in Government securities and the total gross short position, for the purpose of hedging only, does not exceed their long position in the Government securities and in the Interest Rate Futures at any point of time.

13. Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai.

14. AP Dir Series Circular No. 55 dated April 29, 2011

15. Addressed to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.

16. In terms of AP Dir Series Circular No. 45 dated March 15, 2011 submission of Part B of form FC-GPR has been discontinued. Indian companies are now required to submit an Annual return for Foreign Assets and Liabilities.

17. Addressed to the Chief General Manager- in-Charge, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.

18. 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;

19. 'Person of Indian Origin' means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if

(a) he at any time held Indian passport; or

(b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

20. Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

21. Addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

22. AP (DIR Series) Circular No. 08 dated August 25, 2005

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

23. 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.

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

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.