

RBI/2013-14/15 Master Circular No.15 /2013-14

July 01, 2013

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) of 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 This circular will stand withdrawn on July 1, 2014 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Rudra Narayan Kar)
Chief General Manager-in-Charge

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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 yearly basis on March 31 of each year (since 2010) elaborating the policy and the process in respect of FDI in India. The latest "Consolidated FDI Policy Circular" dated April 5, 2013 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://www.dipp.nic.in/English/Policies/FDI_Circular_01_2013.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 convertible preference shares¹ of an Indian company by non-residents through two routes:

- 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.
- Government Route: Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

3. Eligibility for Investment in India

(i) A person resident outside India² or an entity incorporated outside India, 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. Further, a person who is a citizen of Pakistan or an entity incorporated in Pakistan, may, with the prior approval of the FIPB, can invest in an Indian company under FDI Scheme, subject to the prohibitions applicable to all foreign investors and the Indian company, receiving such foreign direct investment, should not be engaged in sectors / activities pertaining to defence, space and atomic energy.

(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, has 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 guidelines

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

- on the basis of SEBI guidelines in case of listed companies.
- 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 due for payment/repayment or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

• However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

• 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.

• 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.

• 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.
- Acquisition / 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 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.

• 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 /import of capital goods by units in SEZ 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 account in Indian Rupees in India which is opened with the approval from AD Category - I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration.

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 are 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 activities³:

- 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):

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

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

8. Modes of Investment under Foreign Direct Investment Scheme.

Foreign Direct Investment in India can be made through the 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.

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

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:

8 B.I Transfer of shares by a Person resident outside India

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, shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs).

Note: Transfer of shares from or by erstwhile OCBs would require prior approval of the Reserve Bank of India.

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(Sale / Gift):

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

(ii) Sale under private arrangement: 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 in case where transfer of shares are under SEBI regulations and where the FEMA pricing guidelines are not met, subject to the following

- a. The original and resultant investment comply with the extant FDI policy/ FEMA regulations;
- b. The pricing complies with the relevant SEBI regulations (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI (SAST) and buy back); and
- c. CA certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
- d. Compliance with reporting and other guidelines as given in Annex 3.

Note: Transfer of shares from a Non Resident to Resident other than under SEBI regulations and where the FEMA pricing guidelines are not met would require the prior approval of the Reserve Bank of India.

(iii) Sale of shares/ convertible debentures on the Stock Exchange by person resident outside India: 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.

8.B.II Transfer of shares/convertible debentures from Resident to Person Resident outside India

A person resident in India can transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the following along with pricing, reporting and other guidelines given in Annex - 3.

a) where the transfer of shares requires the prior approval of the FIPB as per extant FDI policy provided that;

i) the requisite FIPB approval has been obtained; and

ii) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

b) where SEBI (SAST) guidelines are attracted, subject to adherence with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

c) where the pricing guidelines under FEMA,1999 are not met provided that:

i) the resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization,etc.),reporting requirements, documentation, etc.;

ii) The pricing for the transaction is compliant with specific/explicit , extant and relevant SEBI regulations(such as IPO, book building, block deals, delisting, open/ exit offer,substantial acquisition/SEBI(SAST); and

iii) CA Certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.

d) where the investee company is in the financial services sector provided that:

i). No Objection Certificates(NOCs) are obtained from the respective regulators/regulators of the investee company as well as the transferor and transferee entities and such NOCs are filed along with the Form FC-TRS with the AD bank; and

ii). The FDI policy and FEMA Regulations in terms of sectoral caps, conditionalities(such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

Note: 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 would not be available for the above transactions if they are not meeting the pricing guidelines or in case of transfer of shares / debentures by way of gift from a Resident to a Non-Resident / Non-Resident Indian.

8.B. III Transfer of Shares by Resident which requires Government approval

The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval :

(i) Transfer of shares of companies engaged in sector falling under the Government Route.

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

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

(i) Transfer of shares or convertible debentures from residents to non-residents by way of sale requires prior approval of Reserve Bank in case where the non-resident acquirer proposes deferment of payment of the amount of consideration. 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) 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 Bank. 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 50,000 per financial year.

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

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

8.B.V - Escrow account for transfer of shares

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 relating to transfer of shares. 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).

8.B.VI The reporting guidelines are given in Section V of the Master Circular.

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.

- 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 Bank. As such, entitlement of rights share is not automatically available to OCBs. However, bonus shares can be issued to erstwhile OCBs without prior approval of the Reserve Bank, provided that the OCB is not in the adverse list of RBI.

- 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 / Lumpsum Fee / Royalty / Import of capital goods by units in 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 due for payment/repayment*, 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 (excluding 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 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) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.

(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 by the foreign investor to the company directly or through the bank account opened by the foreign investor, as provided under FEMA regulations. (as amended vide AP DIR Circular No. 104 dated May 17, 2013).

d) The applications, complete in all respects, for capitalisation being made within the period of 180 days from the date of incorporation of the company.

General conditions for issue of equity shares against Import of capital goods / machinery/ equipment and Pre-operative / pre - incorporation expenses:

(a) All requests for conversion should be accompanied by a special resolution of the company;

(b) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

(vi) Issue of shares to a non-resident against shares swap 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.

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 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 Bank⁴ 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) 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.

8G. FDI - through issue / transfer of 'participating interest / right' in oil fields to a non resident

Foreign investment by way of issue / transfer of 'participating interest/right' in oil fields by Indian companies to a non resident is treated as an FDI under the extant FDI policy and the FEMA regulations. Accordingly, these transactions have to be reported as FDI transactions. Transfer of 'participating interest/ rights' will be reported as 'other' category under Para 7 of revised Form FC-TRS and issuance of 'participating interest/ rights' will be reported as 'other' category of instruments under Para 4 of Form FC-GPR

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 bonafide 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 be utilized / has utilized the proceeds of the ECB for the permitted end use/s only.

c) 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 bonafide business purpose, subject to the following conditions:

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

c) Non-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 :

- I. loan is availed of only from an overseas bank;
- II. loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;
- III. overseas investment should not result in any capital inflow into India;
- IV. in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and
- V. submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

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 of a resolution by its Board of Directors, followed by a special resolution to that effect by its General Body which should necessarily be intimated to the Reserve Bank of India immediately as hitherto, along with certificate from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Investment Policy, as amended from time to time have been complied with.

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 of a resolution by its Board of Directors followed by a special resolution to that effect by its General Body which should necessarily be intimated to the Reserve Bank of India immediately as hitherto, along with Certificate from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Investment Policy, as amended from time to time have been complied with.

C. Prohibition on investments by FIIs and NRIs

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

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

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

- SEBI registered FIIs are allowed to trade in all exchange traded derivative contracts 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.
- 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.).
- 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.
- 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, government securities and corporate bonds as collateral to the recognised Stock Exchanges in India in addition to 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 Bank. 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 SEBI from time to time, the current limit being USD 25 billion and investments in Corporate bonds can also be kept as collateral with the recognised Stock Exchanges in India, in addition to cash and foreign sovereign securities with AAA rating 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:

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

- 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. Prior intimation to Reserve Bank of India

An Indian company raising the aggregate FII and/or NRI investment limit should necessarily intimate the same to the Reserve Bank of India, immediately, as hitherto, along with a Certificate from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Policy, as amended from time to time, have been complied with.

11. Caution List

When the aggregate net purchases of equity shares of the Indian company by FIIs/NRIs/PIOs reaches the cut-off point of 2 per cent below the overall limit, the Reserve Bank cautions all the designated bank branches not to purchase any more equity shares of the respective company on behalf of any FIIs/ NRIs/ PIOs without prior approval of the Reserve Bank. The link offices are then required to intimate the Reserve Bank about the total number and value of equity shares/ convertible debentures of the company proposed to be bought on behalf of their FIIs /NRIs /PIOs clients. On receipt of such proposals, the Reserve Bank gives clearances on a first-come-first serve basis till such investments in companies reaches the respective limits (such as 10 / 24 / 30 / 40/ 49 per cent limit or the sectoral caps/statutory ceilings), as applicable.

12. Ban List

Once the shareholding by FIIs/NRIs/PIO reaches the overall ceiling / sectoral cap / statutory limit, the Reserve Bank places the company in the Ban List and advises all designated bank branches to stop purchases on behalf of their FIIs/ NRIs/ PIO clients. Once a company is placed in the Ban List, no FII / NRI can purchase the shares of the company under the PIS.

The Reserve Bank also informs the general public about the `caution' and the `stop purchase' in the companies through a press release and an updated list regarding the same is placed on the RBI website

13. Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of FIIs

To facilitate the settlement process of the FIIs trades under the portfolio route, custodian banks were permitted to issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the Portfolio Investment Scheme (PIS).

14. Investment by Qualified Foreign Investors (QFIs) in listed equity shares

Qualified Foreign Investors, who meet the following definition are allowed to make investments in all eligible securities for QFIs:

(i) Definition - QFIs shall mean a person who fulfills the following criteria :

(a) Resident in a country that is a member of Financial Action task Force (FATF) or a member of a group which is a member of FATF; and

(b) Resident in a country that is a signatory to IOSCO's MMoU (Appendix A Signatories) or a signatory of a bilateral MoU with SEBI

PROVIDED that the person is not resident in a country listed in the public statements issued by FATF from time to time on jurisdictions having a strategic AML/CFT deficiencies to which counter measures apply or that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies;

PROVIDED that such person is not resident in India;

PROVIDED FURTHER that such person is not registered with SEBI as a Foreign Institutional Investor (FII) or Sub-Account of an FII or Foreign Venture Capital Investor (FVCI).

Explanation - For the purposes of this clause:

(1) "bilateral MoU with SEBI" shall mean a bilateral MoU between SEBI and the overseas regulator that, inter alia, provides for information sharing arrangements.

(2) Member of FATF shall not mean an associate member of FATF.

ii) Eligible instruments and eligible transactions - QFIs shall be permitted to invest through SEBI registered Qualified Depository Participants (QDPs defined as per the extant SEBI regulations) only in equity shares of listed Indian companies through registered brokers on recognized stock exchanges in India as well as in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations. QFIs shall also be permitted to acquire equity shares by way of rights shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the investment limits as prescribed in para. (v) below.

QFIs shall be allowed to sell the equity shares so acquired by way of sale

(a) Through recognized brokers on recognized stock exchanges in India; or

(b) In an open offer in accordance with the SEBI (Substantial Acquisition of Shares and

Takeovers) Regulations, 2011; or
(c) In an open offer in accordance with the SEBI (Delisting of Securities) Guidelines, 2009;
or
(d) Through buyback of shares by a listed Indian company in accordance with the SEBI (Buyback) Regulations, 1998.

(iii) Mode of payment / repatriation - For QFI investments in eligible securities, a single non- interest bearing Rupee Account would be maintained with an AD Category- I bank in India. The account shall be funded by inward remittance through normal banking channel and by credit of the sale/redemption/buyback proceeds (net of taxes) and on account of interest payment / dividend on the eligible securities for QFIs. The funds in this account shall be utilized for purchase of eligible securities for QFIs or for remittance (net of taxes) outside India. The single non- interest bearing Rupee Account would be operated by QDP on behalf of QFI.

(iv) Demat accounts - QFIs would be allowed to open a dedicated demat account with a QDP in India for investment in equity shares under the scheme. Each QFI shall maintain a single demat account with a QDP for all investments in eligible securities for QFIs in India.

(v) Limits - The individual and aggregate investment limits for investment by QFIs in equity shares of listed Indian companies shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme for foreign investment in India. Further, wherever there are composite sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps. The onus of monitoring and compliance of these limits shall remain jointly and severally with the respective QFIs, QDPs and the respective Indian companies (receiving such investment).

(vi) KYC - QDPs will ensure KYC of the QFIs as per the norms prescribed by SEBI. AD Category-I banks will also ensure KYC of the QFIs for opening and maintenance of the single non- interest bearing Rupee accounts as per the extant norms.

(vii) Permissible currencies - QFIs will remit foreign inward remittance through normal banking channel in any permitted currency (freely convertible) directly into single non- interest bearing Rupee Account of the QDP maintained with AD Category-I bank.

(viii) Pricing - The pricing of all eligible transactions and investment in all eligible instruments by QFIs shall be in accordance with the relevant and applicable SEBI guidelines only.

(ix) Reporting - In addition to the reporting to SEBI as may be prescribed by them, QDPs and AD Category-I banks (maintaining QFI accounts) will also ensure reporting to the Reserve Bank of India in a manner and format as prescribed by the Reserve Bank of India from time to time.

(x) Hedging - QFIs would be permitted to hedge their currency risk on account of their permissible investments (in equity and debt instruments) in terms of the guidelines issued by the Reserve Bank from time to time.

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 Venture Capital Fund (VCF) or in a scheme floated by such VCFs 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.

(ii) 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.

(iii) FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF or in units of schemes / funds set up by a VCF through initial public offer or private placement or by way of private arrangement or purchase from third party. Further, FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time.

(iv) 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.

(v) A SEBI registered FVCI can acquire / sale securities (as given in (iii) above) by way of public offer or private placement by the issuer of such securities and /or by way of private arrangement with a third party at a price that is mutually acceptable to the buyer and the seller.

(vi) 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.

(vii) The investments made by FVCI under 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) NRIs 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.

NRIs can also invest in non-convertible debentures issued by an Indian Company, both on repatriation basis and on non-repatriation basis, 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

A 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 (ICDR) Regulations, 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) ⁵A limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) has been introduced which would be subject to the certain terms and conditions. Further, the issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.

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, QFIs and Long Term Investors

FIIs, QFIs and Long Term Investors 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, to be listed NCDs/ bonds only if listing of such NCDs/bonds is committed to be done within 15 days of such investment, 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, QFIs and Long Term Investors registered with SEBI comprising Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds and Foreign Central Banks is USD 51 billion. The eligible investors may invest in Commercial Paper upto a limit of USD 3.50 billion within the overall limit of USD 51 billion.

The present limit for investment by SEBI registered FIIs, QFIs and long term investors in Government securities including Treasury Bills is USD 25 billion. An additional limit of USD 5 billion is available for investment in dated Government securities for long term investors registered with SEBI, comprising Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds and Foreign Central Banks. Eligible investors may invest in Treasury Bills upto a limit of USD 5.50 billion, within the above overall limits.

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 percent 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 Bank.

(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).

6. Qualified Foreign Investors (QFIs) investment in the units of Domestic Mutual funds

Non- resident investors (other than SEBI registered FIIs/FVCIs) who meet the KYC requirements of SEBI, were permitted to purchase on repatriation basis rupee denominated

units of equity schemes of SEBI registered domestic MFs as Qualified Foreign Investors' (QFIs), in accordance with the terms and conditions as stipulated by the SEBI and the RBI from time to time in this regard.

QFIs may invest in rupee denominated units of equity schemes of SEBI registered domestic MFs under the two routes, namely:

(i) Direct Route - SEBI registered Qualified Depository Participant (QDP) route -

- The QDP route will be operated through single non-interest bearing Rupee account to be maintained with an AD Category I Bank in India. The foreign inward remittances in to the single non-interest bearing Rupee account shall be received only in permissible currency.

(ii) Indirect Route - Unit Confirmation Receipt (UCR) route - Domestic MFs would be allowed to open foreign currency accounts outside India for the limited purpose of receiving subscriptions from the QFIs as well as for redeeming the UCRs. The UCR will be issued against units of domestic MF equity schemes.

(iii) Investments by the QFIs under both the routes would be subject to a ceiling of USD 10 billion for investment in units of equity based domestic MF and USD 3 billion for investment in units of debt based domestic MF. QFIs can also invest in those MF schemes that hold at least 25 per cent of their assets (either in debt or equity or both) in the infrastructure sector under the USD 3 billion sub-limit for investment in mutual funds related to infrastructure.

7. Infrastructure Debt Funds (IDF)

In order to accelerate and enhance the flow of long term funds to infrastructure projects for undertaking the Government's ambitious programme of infrastructure development, Union Finance Minister in his budget speech for 2011-12 had announced setting up of Infrastructure Debt Funds (IDFs). Government vide press release dated June 24, 2011 notified the broad structure of the proposed IDFs. The summarized position is given as under:

(i) SWFs, Multilateral Agencies, Pension Funds, Insurance Funds and Endowment Funds - registered with SEBI, FIIs, NRIs would be the eligible class non- resident investors which will be investing in IDFs

(ii) Eligible non-resident investors are allowed to invest on repatriation basis in (i) Rupee and Foreign currency denominated bonds issued by the IDFs set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank of India and in (ii) Rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds (MFs), in accordance with the terms and conditions stipulated by the SEBI and the Reserve Bank of India from time to time.

(iii) The eligible instruments are Foreign Currency & Rupee denominated Bonds and Rupee denominated Units;

(iv) The facility of Foreign exchange hedging would be available to non-resident IDF investors, IDFs as well as infrastructure project companies exposed to the foreign exchange/ currency risk.

8. Purchase of other securities by QFIs

QFIs can invest through SEBI registered Qualified Depository Participants (QDPs) (defined as per the extant SEBI regulations) in eligible corporate debt instruments, viz. listed Non-Convertible Debentures (NCDs), listed bonds of Indian companies, listed units of Mutual Fund debt Schemes and "to be listed" corporate bonds (hereinafter referred to as 'eligible debt securities') directly from the issuer or through a registered stock broker on a recognized stock exchange in India. However, in case of non-listing of "to be listed" corporate bonds, the provisions relating to FIIs would be applicable. Further, QFIs shall also be permitted to sell 'eligible debt securities' so acquired by way of sale through registered stock broker on a recognized stock exchange in India or by way of buyback or redemption by the issuer.

Section - V: Reporting guidelines for Foreign Investments in India as per Section I and II

1. Reporting of FDI⁶ 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) /Escrow 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)/Escrow 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) 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 Form FC-GPR:

(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 / lumpsum 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](#). 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.

(vii) 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.

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 - 8) (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 Bank⁷, a report on a daily basis on PIS transactions undertaken by it, on behalf of NRIs. This report can be 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.

8. Reporting of foreign investment by way of issue / transfer of 'participating interest/right' in oil fields

Foreign investment by way of issue / transfer of 'participating interest/right' in oil fields by Indian companies to a non resident would be treated as an FDI transaction under the extant FDI policy and the FEMA regulations. Accordingly, transfer of 'participating interest/ rights' will be reported as 'other' category under Para 7 of revised Form FC-TRS as given in the Annex-8 and issuance of 'participating interest/ rights' will be reported as 'other' category of instruments under Para 4 of Form FC-GPR as given in the Annex-9.

Part II

Investment in Partnership Firm / Proprietary Concern

1. Investment in Partnership Firm / Proprietary Concern

A Non-Resident Indian⁸ (NRI) or a Person of Indian Origin⁹ (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 there from) 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 Bank¹⁰ 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 Bank¹¹, 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. Restrictions

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

Annex - 12

Appendix

List of Important Circulars/Notifications which have been consolidated in the Master
Circular on
Foreign Investments 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
32.	No. FEMA.224/2012-RB	March 07, 2012
33.	No. FEMA.229/2012-RB	April 23, 2012
34.	No. FEMA.230/2012-RB	May 29, 2012
35.	No. FEMA.242/2012-RB	October 19, 2012
36.	No. FEMA.255/2013-RB	January 19, 2013
37.	No. FEMA.266/2013-RB	March 05, 2013
38.	No. FEMA.272/2013-RB	March 26, 2103

Circulars

Sl.No.	Circulars	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.	<u>A.P.DIR(Series) Circular No.69</u>	January 13, 2003
12.	<u>A.P.DIR(Series) Circular No.75</u>	February 3, 2003
13.	<u>A.P.DIR(Series) Circular No.88</u>	March 27, 2003
14.	<u>A.P.DIR(Series) Circular No.101</u>	May 5, 2003
15.	<u>A.P.DIR(Series) Circular No.10</u>	August 20, 2003
16.	<u>A.P.DIR(Series) Circular No.13</u>	September 1, 2003
17.	<u>A.P.DIR(Series) Circular No.14</u>	September 16, 2003
18.	<u>A.P.DIR(Series) Circular No.28</u>	October 17, 2003
19.	<u>A.P.DIR(Series) Circular No.35</u>	November 14, 2003
20.	<u>A.P.DIR(Series) Circular No.38</u>	December 3, 2003
21.	<u>A.P.DIR(Series) Circular No.39</u>	December 3, 2003
22.	<u>A.P.DIR(Series) Circular No.43</u>	December 8, 2003
23.	<u>A.P.DIR(Series) Circular No.44</u>	December 8, 2003
24.	<u>AP (DIR Series) Circular No.53</u>	December 17, 2003
25.	<u>A.P.DIR(Series) Circular No.54</u>	December 20, 2003
26.	<u>A.P.DIR(Series) Circular No.63</u>	February 3, 2004
27.	<u>A.P.DIR(Series) Circular No.67</u>	February 6, 2004
28.	<u>A.P.DIR(Series) Circular No.89</u>	April 24, 2004
29.	<u>A.P.DIR(Series) Circular No.11</u>	September 13, 2004
30.	<u>A.P.DIR(Series) Circular No.13</u>	October 1, 2004
31.	<u>A.P.DIR(Series) Circular No.15</u>	October 1, 2004
32.	<u>A.P.DIR(Series) Circular No.16</u>	October 4, 2004
33.	<u>AP (DIR Series) Circular No. 04</u>	July 29, 2005
34.	<u>A.P. (DIR Series) Circular No. 06</u>	August 11, 2005
35.	<u>A.P. (DIR Series) Circular No. 07</u>	August 17, 2005
36.	<u>A.P. (DIR Series) Circular No. 08</u>	August 25, 2005
37.	<u>A. P. (DIR Series) Circular No. 10</u>	August 30, 2005
38.	<u>A.P. (DIR Series) Circular No. 11</u>	September 05, 2005
39.	<u>A.P. (DIR Series) Circular No.16</u>	November 11, 2005
40.	<u>A.P.(DIR Series) Circular No. 24</u>	January 25, 2006
41.	<u>A.P.(DIR Series) Circular No. 4</u>	July 28, 2006
42.	<u>A.P.(DIR Series) Circular No. 12</u>	November 16, 2006
43.	<u>A.P.(DIR Series) Circular No. 25</u>	December 22, 2006
44.	<u>A.P.(DIR Series) Circular No. 32</u>	February 8, 2007
45.	<u>A.P.(DIR Series) Circular No. 40</u>	April 20, 2007
46.	<u>A.P.(DIR Series) Circular No. 62</u>	May 24, 2007
47.	<u>A.P.(DIR Series) Circular No. 65</u>	May 31, 2007
48.	<u>A.P.(DIR Series) Circular No. 73</u>	June 8, 2007
49.	<u>A.P.(DIR Series) Circular No. 74</u>	June 8, 2007
50.	<u>A.P.(DIR Series) Circular No. 2</u>	July 19, 2007
51.	<u>A.P.(DIR Series) Circular No. 20</u>	December 14, 2007
52.	<u>A.P.(DIR Series) Circular No. 22</u>	December 19, 2007
53.	<u>A.P.(DIR Series) Circular No. 23</u>	December 31, 2007
54.	<u>A.P.(DIR Series) Circular No. 40</u>	April 28, 2008

55.	<u>A.P.(DIR Series) Circular No. 41</u>	April 28, 2008
56.	<u>A.P.(DIR Series) Circular No. 44</u>	May 30, 2008
57.	<u>A.P.(DIR Series) Circular No. 25</u>	October 17, 2008
58.	<u>A.P.(DIR Series) Circular No. 63</u>	April 22, 2009
59.	<u>A.P.(DIR Series) Circular No. 5</u>	July 22, 2009
60.	<u>A.P.(DIR Series) Circular No. 47</u>	April 12, 2010
61.	<u>A.P.(DIR Series) Circular No. 49</u>	May 4, 2010
62.	<u>A.P.(DIR Series) Circular No. 13</u>	September 14, 2010
63.	<u>A.P.(DIR Series) Circular No. 45</u>	March 15, 2011
64.	<u>A.P.(DIR Series) Circular No. 54</u>	April 29, 2011
65.	<u>A.P.(DIR Series) Circular No. 55</u>	April 29, 2011
66.	<u>A.P.(DIR Series) Circular No. 57</u>	May 2, 2011
67.	<u>A.P.(DIR Series) Circular No. 58</u>	May 2, 2011
68.	<u>A.P.(DIR Series) Circular No.74</u>	June 30, 2011
69.	<u>A.P. (DIR Series) Circular No. 8</u>	August 9, 2011
70.	<u>A.P. (DIR Series) Circular No. 14</u>	September 15, 2011
71.	<u>A. P. (DIR Series) Circular No. 42</u>	November 3, 2011
72.	<u>A. P. (DIR Series) Circular No. 43</u>	November 4, 2011
73.	<u>A. P. (DIR Series) Circular No. 45</u>	November 16, 2011
74.	<u>A.P. (DIR Series) Circular No. 49</u>	November 22, 2011
75.	<u>A.P. (DIR Series) Circular No. 55</u>	December 9, 2011
76.	<u>A.P. (DIR Series) Circular No. 56</u>	December 9, 2011
77.	<u>A.P. (DIR Series) Circular No. 66</u>	January 13, 2012
78.	<u>A.P. (DIR Series) Circular No. 67</u>	January 13, 2012
79.	<u>A.P. (DIR Series) Circular No. 89</u>	March 1, 2012
80.	<u>A.P. (DIR Series) Circular No. 93</u>	March 19, 2012
81.	<u>A.P. (DIR Series) Circular No. 94</u>	March 19, 2012
82.	<u>A.P. (DIR Series) Circular No. 120</u>	May 8, 2012
83.	<u>A.P. (DIR Series) Circular No. 121</u>	May 8, 2012
84.	<u>A.P. (DIR Series) Circular No. 127</u>	May 15, 2012
85.	<u>A.P. (DIR Series) Circular No. 133</u>	June 20, 2012
86.	<u>A.P. (DIR Series) Circular No. 135</u>	June 25, 2012
87.	<u>A.P. (DIR Series) Circular No. 137</u>	June 28, 2012
88.	<u>A.P. (DIR Series) Circular No. 7</u>	July 16, 2012
89.	<u>A.P. (DIR Series) Circular No. 16</u>	August 22, 2012
90.	<u>A.P. (DIR Series) Circular No.19</u>	August 28, 2012
91.	<u>A.P. (DIR Series) Circular No. 32</u>	September 21, 2012
92.	<u>A.P. (DIR Series) Circular No. 36</u>	September 26, 2012
93.	<u>A.P. (DIR Series) Circular No. 41</u>	October 10, 2012
94.	<u>A.P. (DIR Series) Circular No. 74</u>	January 10, 2013
95.	<u>A.P. (DIR Series) Circular No. 80</u>	January 24, 2013
96.	<u>A.P. (DIR Series) Circular No. 90</u>	March 14, 2013
97.	<u>A.P. (DIR Series) Circular No. 94</u>	April 01, 2013
98.	<u>A.P. (DIR Series) Circular No. 104</u>	May 17, 2013

99.	A.P. (DIR Series) Circular No. 110	June 12, 2013
100.	A.P. (DIR Series) Circular No. 111	June 12, 2013

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;

• "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 1/2000-RB dated May 3, 2000

⁴ 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.

⁵ Updated in terms of [A.P.\(DIR Series\) Circular No. 19 dated August 28, 2012](#)

⁶ Part B of form FC-GPR has been discontinued and replaced by an Annual return for Foreign Assets and Liabilities which is available at http://rbidocs.rbi.org.in/rdocs/content/pdfs/APFL200612_F.pdf

⁷ 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.

⁸ 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;

⁹ '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);

¹⁰ Addressed to the Chief General Manager-in-Charge , Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

¹¹ Addressed to the Chief General Manager-in-Charge , Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai