

Government of India
Ministry of Commerce & Industry
Department for Promotion of Industry and Internal Trade
FDI Policy Section

Press Note No. 1 (2022 Series)

Subject: Review of FDI Policy for permitting foreign investment in Life Insurance Corporation of India (LIC) and other modifications for further clarity of the existing FDI Policy.

The Government of India has reviewed the extant FDI policy for permitting foreign investment in Life Insurance Corporation of India (LIC) and other modifications for consistency and further clarity of the existing FDI Policy. Accordingly, the following amendments have been made under the Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy):

1.1 Para 2.1.5 of the FDI Policy is amended to be read as under:

‘Capital’ means equity shares; fully, compulsorily and mandatorily convertible preference shares; fully, compulsorily and mandatorily convertible debentures and warrants;

Note: The equity shares issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 or any other applicable law, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and to be mandatorily and fully convertible. Further, ‘warrant’ includes Share Warrant issued by an Indian Company in accordance with the regulations made by the Securities and Exchange Board of India (SEBI), the Companies Act, 2013 or any other applicable law.

1.2 Para 2.1.9 of the FDI Policy is amended to be read as under:

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

1.3 Para 2.1.17 of FDI Policy is amended to be read as under:

'Foreign Investment' means any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian company or to the capital of a LLP;

Explanation: If a declaration is made by a person as per the provisions of the Companies Act, 2013 or any other applicable law, about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;

Note: A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company;

1.4 Para 2.1.27 of FDI Policy is amended to be read as under:

'Indian Company' means a company as defined in the Companies Act, 2013 which is incorporated in India, or a body corporate established or constituted by or under any Central or State Act;

Note:

1. It is clarified that reference to 'company' or 'investee company' or 'transferee company' or 'transferor company' in the FDI Policy also includes a reference to a body corporate established or constituted by or under any Central or State Act.
2. It is further clarified that if the term 'Company' or 'Indian company' or 'Investee Company' is qualified by reference to a company incorporated under the Companies Act, such term shall mean a company incorporated under the Companies Act but not a body corporate.
3. It is also clarified that 'Indian Company' does not include a society, trust or any entity, which is excluded as an eligible investee entity under the FDI Policy.

1.5 A new Para 2.1.47A is inserted under the FDI Policy as follows:

'Share Based Employee Benefits' means any issue of capital instruments to employees, pursuant to share based employee benefits schemes formulated by a body corporate established or constituted by or under any Central or State Act.

1.6 A new Para 2.1.48A is inserted under the FDI Policy as follows:

'Subsidiary' shall have the same meaning as is assigned to it under the Companies Act, 2013, as amended from time to time.

1.7 The existing provisions under Para 3.4.2 (vi) and Para 3.4.2 (vii) of the FDI Policy are re-numbered as new Para 3.4.3 and new Para 3.4.4.

1.8 The existing definitions of 'Real Estate Business' under **Para 5.1(f) and Note (i) to Para 5.2.10.2** of the FDI Policy, are amended and aligned in the following manner:

(i) Para 5.1(f) of the FDI Policy is amended to be read as under:

Real Estate Business or Construction of Farm Houses

'Real estate business' means dealing in land and immovable property with a view to earning profit there from 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 and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.

(ii) Note (i) to Para 5.2.10.2 of the FDI Policy is amended to be read as under:

It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).

"Real estate business" means dealing in land and immovable property with a view to earning profit there from 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 and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.

1.9 A new **Para 5.2.22.1A** is inserted under Para 5.2.22.1 of the FDI Policy as follows:

Sector/Activity	% of Equity/ FDI cap	Entry Route
5.2.22.1A Life Insurance Corporation of India	20%	Automatic

- 1.10** Para 5.2.22.3 of the FDI Policy on “Other Conditions”, is to be bifurcated in two parts through insertions of new Paras 5.2.22.3.1 and 5.2.22.3.2 applicable on Indian insurance companies/intermediaries or insurance intermediaries and LIC, respectively. The existing clauses (a) to (j) and amended clause (k) under Para 5.2.22.3 are placed under Para 5.2.22.3.1 titled ‘*Other conditions applicable to Indian insurance companies and intermediaries or insurance intermediaries*’ and new clauses (a) to (c) are placed under Para 5.2.22.3.2 titled ‘*Other conditions applicable to the Life Insurance Corporation of India (LIC)*’. Accordingly, **Para 5.2.22.3** of the FDI Policy is amended to be read as under:

5.2.22.3 Other Conditions

5.2.22.3.1 Other conditions applicable to Indian insurance companies and intermediaries or insurance intermediaries:

- (a) No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed seventy-four percent of the paid-up equity capital of such Indian Insurance company.
- (b) The foreign investment up to seventy-four percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.
- (c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license/approval from the Insurance Regulatory and Development Authority of India for undertaking insurance and related activities.
- (d) (I) In an Indian Insurance Company having foreign investment,-
 - i. a majority of its directors;
 - ii. a majority of its Key Management Persons; and
 - iii. at least one among the Chairperson of its Board, its Managing Director and its Chief Executive Officershall be Resident Indian Citizens.

Explanation: For the above purposes, the expression — “Key Management Person” shall have the same meaning as assigned to it in guidelines made by the Insurance Regulatory and Development Authority of India on corporate governance for insurers in India.

- (II) An Indian Insurance company having foreign investment shall comply with the provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time and applicable rules/regulations notified by the

Department of Financial Services/Insurance Regulatory and Development Authority of India from time to time.

- (e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in Chapter-IV, Rule 10 and 11 read with Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time.
- (f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.
- (g) The foreign equity investment cap of 100 percent shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. The composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries shall be as specified by the concerned regulator from time to time.
- (h) The foreign direct investment proposals shall be allowed under the automatic route subject to verification by the Authority and the foreign investment in intermediaries or insurance intermediaries shall be governed by the same terms as provided under rules 7 and 8 of the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time:

Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from their primary (i.e., non-insurance related) business must remain above 50 percent of their total revenues in any financial year.

- (i) The insurance intermediary that has majority shareholding of foreign investors shall undertake the following:
 - i. be incorporated as a limited company under the provisions of the Companies Act, 2013;
 - ii. at least one from among the Chairman of the Board of Directors or the Chief Executive Officer or Principal Officer or Managing Director of the insurance intermediary shall be a resident Indian citizen;
 - iii. shall take prior permission of the Authority for repatriating dividend;

- iv. shall bring in the latest technological, managerial and other skills;
 - v. shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority;
 - vi. shall make disclosures in the formats to be specified by the Authority of all payments made to its group or promoter or subsidiary or interconnected or associate entities;
 - vii. composition of the Board of Directors and key management persons shall be as specified by the concerned regulators;
- (j) The provisions of paragraphs (i) (b) and (d) of Annexure 8 relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.
- (k) Terms 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in the rules notified by the Department of Financial Services under the Insurance Act, 1938 or in the regulations issued by Insurance Regulatory and Development Authority of India from time to time, in respect of foreign investment in Indian Insurance Companies and intermediaries or insurance intermediaries.

5.2.22.3.2 Other conditions applicable to the Life Insurance Corporation of India (LIC) shall be as follows:

- (a) Foreign investment in LIC shall be subject to compliance with the provisions of the Life Insurance Corporation Act, 1956, as amended from time to time (LIC Act) and such provisions of the Insurance Act, 1938, as amended from time to time, as are applicable to LIC as per the provisions of Section 43 of the LIC Act.
- (b) Clauses (e) and (f) of Paragraph 5.2.22.3.1 above, shall also apply to LIC as if reference therein to an Indian Insurance Company is a reference to LIC.
- (c) The terms referred to in clause (k) of Paragraph 5.2.22.3.1 above, shall have the meaning as referred to therein.

Explanation: For the purposes of Paragraph 5.2.22.3.2 any reference to Indian insurance company or company in the meaning provided to any term (referred to in clause (k) of Paragraph 5.2.22.3.1) in the rules or regulations referred to therein, shall be construed as a reference to LIC.

1.11 Para 4 of Annexure 3 of the FDI Policy is amended to be read as under:

Where a scheme of compromise or arrangement or merger or amalgamation of two or more Indian companies, or a reconstruction by way of demerger or otherwise of an Indian company, or transfer of undertaking of one or more Indian company to another Indian company, or involving division of one or more Indian company, has been approved by the National Company Law Tribunal or other authority competent to do so by law, the transferee company or the new company, as the case may be, may issue capital instruments to the existing shareholders of the transferor company resident outside India, subject to the following conditions:

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

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

1.12 Para 5 of Annexure 3 of the FDI Policy is amended to be read as under:

Issue of Employees Stock Option (ESOP) scheme / sweat equity shares/ Share Based Employee Benefits

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

- (a) the scheme has been drawn either in terms of regulations made under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act, 2013 or as per any other applicable law, as the case may be;
- (b) the 'employee's stock option' or 'sweat equity shares' or Share Based Employee Benefits issued to non-resident employees/ or directors under the applicable rules/ or regulations or other law are in compliance with the sectoral cap applicable to such company;
- (c) issue of 'employee's stock option'/ or 'sweat equity shares' or Share Based Employee Benefits by a company where foreign investment is under the approval route shall require prior approval of the Government of India;
- (d) issue of 'employee's stock option'/ or 'sweat equity shares' or Share Based Employee Benefits under the applicable rules/ or regulations or other law to an employee/ or director who is a citizen of Bangladesh/ or Pakistan shall require prior approval of the Government of India;

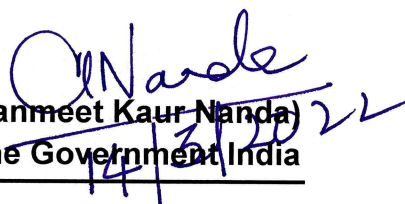
- (e) the Indian company shall file with the Foreign Exchange Department of the Reserve Bank of India, within 30 days of the issue of ESOPs or sweat equity shares or shares issued on exercise of ESOPs, a return in the form- "ESOP Reporting".

Note: The form "ESOP Reporting" shall mean the form so named and specified by the Reserve Bank of India for reporting either the statement of shares allotted to Indian employees / directors under ESOP schemes or the statement of shares repurchased by the issuing foreign company from Indian employees / directors under ESOP schemes, as the case may be.

1.13 Clause (e) of Para 1.2(v) of Annexure 4 of the FDI Policy is amended to be read as under:

If a declaration is made by a person under the provisions of section 187C of the Companies Act, 1956 or section 89 of the Companies Act, 2013 or any other applicable law, as the case may be, about a beneficial interest being held by a non-resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as Foreign Investment.

2. The above decision will take effect from the date of FEMA notification.


(Manmeet Kaur Nanda)
Joint Secretary to the Government India

DPIIT File No. 5(3)/2021-FDI Policy dated 14.03.2022

Copy forwarded to:

1. **Press Information Officer, Press Information Bureau-** for giving wide publicity to the above Press Note.
2. **Joint Secretary(I&C), Department of Economic Affairs, North Block, New Delhi**
3. **Reserve Bank of India, Foreign Exchange Department, Mumbai**
4. **NIC Section in the Department for Promotion of Industry and Internal Trade** - for uploading the Press Note on DPIIT's website.
5. **Hindi Section, DPIIT-** for providing Hindi version.

For suitably incorporating the policy changes in Foreign Exchange Management (Non Debt Instruments) Rules, 2019, the relevant schedules thereof and FIRMS portal.