

Department of Industrial Policy and Promotion
Ministry of Commerce and Industry
Government of India

DRAFT PRESS NOTE NO. (2010)

SUBJECT: FDI REGULATORY FRAMEWORK.

1.0 **INTENT AND OBJECTIVE**

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

1.2 FDI is a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a 'lasting interest' in an enterprise (the direct investment enterprise) i.e. resident in an economy other than that of the direct investor. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. In India the 'lasting interest' is not evinced by any minimum holding of percentage of equity capital/shares/voting rights in the investment enterprise. Direct investment allows the direct investor to gain to the access of direct investment enterprise which it might otherwise be unable to do. The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise.

1.3 It is the policy of the Government of India to attract and promote productive FDI from non-residents in activities which significantly contribute to industrialization and socio-economic development. FDI is encouraged in enterprises to significantly expand employment and livelihood opportunities, enhance economic value of products, promote welfare of consumers, increase exports and/or transfer technologies in all economic activities. FDI supplements the domestic capital and technology.

1.4 **The Legal basis:** Foreign Direct Investments by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' and Government of India and Reserve bank of India regulate this under the FEMA 1999 and its various regulations. Keeping in view the current requirements, the Government comes up from time to time with new regulation, amends/changes in existing one through order/allied rules, Press Notes, etc. . The regulatory framework over a period of time thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.5 This Press Note consolidates into one document all the prior regulations on FDI and reflects the current 'regulatory framework' on FDI. It is clarified that this is a consolidation/compilation and comprehensive listing of most matters on FDI and is not intended to make changes in the extant regulations. While attempt has been made to deal with the subject comprehensively, if some aspect(s) has been left out then that will continue to be dealt in the current way where it is listed.

1.6 It is the intent and objective of the Government to have a regulatory framework which is transparent, predictable, understandable, simple and clear to reduce the regulatory burden and promote foreign direct investment. The new system of continuous consolidation and updation is primarily evinced as a measure of investor and investment friendliness.

1.7 This Press Note will have a sunset clause of six months and will automatically lapse on 30th September, 2010. A new press Note on Regulatory Framework would be issued every six months which will incorporate and reflect all the changes in the regulations during the last intervening period of six months. Thus the Government will issue Press Note on FDI Regulatory Framework twice a year in April and October which would be the current regulatory framework on that date.

1.8 All earlier Press Notes on FDI issued by Department of Industrial Policy and Promotion, Government of India stand rescinded.

1.9 Notwithstanding the rescindment of earlier Press Notes, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes shall in so far as it is not inconsistent with this Press Note be deemed to have been done or taken under the corresponding provisions of this Press Note.

(Gopal Krishna)

Joint Secretary to the Government of India

CHAPTER 1: DEFINITIONS

2.0 **DEFINITIONS:** The various definitions of terms used in this Press Note are as follows :-

2.1 'FEMA' means the Foreign Exchange management Act 1999 (42 of 1999) (FEMA).

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

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

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

2.5 'AD Category-I Bank' means a Bank(commercial, State or urban cooperative) which is an Authorized Dealer and allowed to deal in all current and capital account transactions by RBI from time to time.

2.6 'Authorised person' means a authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under Sub-section (a) of Section 10 of FEMA

2.7 'B2B e-commerce' means business entities buying from and selling to each other online.

2.8 'Capital' means equity shares, compulsorily and mandatorily convertible preference shares and compulsorily and mandatorily convertible debentures. Preference shares i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECB's viz eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of London Interbank offered Rate (LIBOR) plus the spread as permissible for ECB's of corresponding maturity. 'Capital' also includes 'Depository Receipts (DRs)/FCCB'.

‘FCCB’ means bonds issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 and subscribed by non-resident in foreign currency and convertible with ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments.

‘DR’ is 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, 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, FCCB/DRs are treated as FDI.

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

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

2.11 ‘Foreign Venture Capital Investor’ means an investor incorporated and established outside India which propose to make investment in Venture Capital Fund(s) or Venture Capital Undertaking(s) in India and in registered with SEBI under SEBI (Foreign Venture Capital Investors) Regulations 2000’.

2.12 ‘FIPB’ means the Foreign Investment Promotion Board constituted by the Government of India.

2.13 ‘FDI’ means foreign investment in the paid up capital of the Indian company not being Foreign Portfolio Investment.

2.14 ‘Government route’ means that investment in resident entities by non-resident entities can be made only with the prior approval from FIPB, Ministry of Finance or SIA, DIPP as the case may be.

2.15 ‘Government of India’ means Department of Economic Affairs, Ministry of Finance or Department of IPP, Ministry of Commerce & Industry.

2.16 ‘Indian Company’ means a company registered or incorporated in India as per the Indian Companies Act, 1956.

2.17 Investment on repatriable basis means investment the sale proceeds of which are net or taxes eligible to be repatriated out of India and the expression 'investment are on repatriable basis' shall be construed accordingly.

2.18 'Joint Venture' (JV) means an Indian entity formed, registered or incorporated in accordance with the laws and regulations in India in which a foreign entity makes a foreign investment

2.19 'Wholly owned subsidiary' means an Indian entity form, registered or incorporated in accordance with the laws and regulations in India whose entire capital is held by non-resident entity.

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

2.21 'Owned and Controlled' by resident Indian citizens means

- **“owned”** by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if more than 50% of the equity interest in it is beneficially owned by resident Indian citizens and Indian companies, which are owned and controlled ultimately by resident Indian citizens;

- **“controlled”** by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors .

2.22 'Owned and Controlled' by 'non-resident entities' means

- **“owned”** by 'non resident entities', if more than 50% of the equity interest in it is beneficially owned by non-residents

- **“controlled”** by 'non resident entities', if non-residents have the power to appoint a majority of its directors

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

(i) he at any time held Indian Passport

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act 1955 (57 of 1955); or

(iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

2.22 'Person resident in India' means -

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –
 - (A) A person who has gone out of India or who stays outside India, in either case-
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) A person who has come to or stays in India, in either case, otherwise than –
 - (a) for or on taking up employment in India; or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

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

2.24 'Previous Venture/tie-up condition' means that the investor has previous/existing venture or tie-up in India as on January 12, 2005, through investment / technology collaboration agreement in the same field in which the Indian company, whose shares are being issued, is engaged, he has to obtain prior permission of Foreign Investment Promotion Board (FIPB), to acquire the shares. This restriction is, however, not applicable to the issue of shares for investments to be made by :

- (i) Venture Capital Funds registered with the Securities and Exchange Board of India (SEBI). (b) or Investments by International/Multinational Financial Institutions like Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Finance Corporation (CDC), Deutsche Entwicklungs Gescellschaft (DEG) etc.;
- (ii) or where in the existing joint venture, investment by either of the parties is less than 3 per cent;
- (iii) or where the existing joint venture / collaboration is defunct or sick
- (iv) or for issue of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer /

trade mark agreement of the person to whom the shares are to be issued are also in the Information Technology sector or in the mining sector for same area/mineral.

Note: For the purposes of ‘Same field’ would be 4 digit NIC 1987 Code.

2.25 ‘Overseas Corporate Body’ (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indian and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indian directly or indirectly but irrevocably.

2.26 ‘RBI’ means Reserve Bank of India.

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

2.28 ‘SEBI’ means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act 1992.

2.29 ‘SEZ’ means a Special Economic Zone as defined in Special Economic Zone Act 2006.

2.30 ‘Venture Capital Fund’ means a fund established in the form of a trust, a company including a body incorporated and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulation, 1996 which has a dedicated pool of capital raised in a manner specified under the regulations and which invests in venture capital undertakings in accordance with the said regulations.

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

2.32 ‘Non resident entity’ means a ‘person resident outside India’ as defined under FEMA

2.33 ‘Holding Company’ would have the same meaning as defined in Indian Companies Act 1956.

CHAPTER 2: SOURCE, TYPE, ELIGIBILITY, CONDITIONS AND ISSUE/TRANSFER OF INVESTMENT

3.0 SOURCE OF INVESTMENT IN INDIA

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

3.2 Investments from Nepal & Bhutan: NRI's, 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 on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

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

3.4 (i) An FII may invest in a particular share issue of an Indian company either under the FDI Scheme or the Portfolio Investment Scheme. (ii) The Indian company which has issued shares to FIIs under the FDI Regulation for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR (Annex) (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical/monitoring purposes.

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

3.5 A Foreign venture capital Investor (FCVI) may contribute upto 100% of the capital of a domestic venture capital fund (VCF/VCC) and may also set up a domestic asset management company to manage the fund. They are also allowed to invest in other

companies subject to FDI Regulations. All investment are allowed under the Government route subject to SEBI and RBI regulations.

4.0 **TYPES OF INSTRUMENTS.**

4.1 Indian entities can issue equity shares, fully and mandatorily convertible debentures and fully and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations.

4.2 Issue of other types of preference shares such as non-convertible, optionally convertible or partially convertible, have to be in accordance with the guidelines applicable for External Commercial Borrowings (ECBs). Since these instruments are denominated in Rupees, the rupee interest rate will be based on the swap equivalent of London Interbank offered Rate (LIBOR) plus the spread permissible for ECBs of corresponding maturity.

4.3 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.

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

- (i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR(ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.
- (ii) A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Regulations. 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, IBCA or Moody's, etc. and such rating not being less than the rating stipulated by 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.
- (iv) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.
- (v) The ADR / GDR proceeds can be 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.
- (vi) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank from time to time, as applicable to all shareholders exercising voting rights.
- (vii) Erstwhile OCBs who are not eligible to invest in India and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
- (viii) The pricing of ADR / GDR issues should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

(ix) The pricing of sponsored ADRs/GDRs would be determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

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

(ii) **Sponsored ADR/GDR issue:** An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue 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.

5.0 ELIGIBILITY OF INVESTMENTS IN RESIDENT ENTITIES

5.1 Investment in an Indian Company

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

5.2 Investment in Partnership Firm / Proprietary Concern:

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

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

- (b) 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.
- (c) Amount invested shall not be eligible for repatriation outside India.
- (ii) Investments with repatriation benefits: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.
- (iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.
- (iv) Restrictions: An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or engaged in Print Media.

5.3 **Investment in Trusts:** Investment in the units of a Venture Capital Fund which is a Trust incorporated under the India Trusts Act 1882 can be allowed upto 100% under the Government route with the condition that such Fund are registered with the Securities and Exchange Board of India (SEBI) under SEBI (Venture Capital Fund) Regulations 1996. Investment in other Trusts is not permitted.

5.4 **Investment in other Entities:** Investment in any other resident entities is not permitted.

6.0 CONDITIONS ON ISSUE/TRANSFER OF SHARES

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

In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

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

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

6.4 Transfer of shares and convertible debentures –

- (i) Foreign investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:
 - (a) A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
 - (b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

In both the above, cases, the previous/existing venture/tie-up condition would apply.

- (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
- (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
- (e) A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than financial services sectors (i.e. Banks, NBFC, Insurance, ARCs, CICs, infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges,

etc.) under private arrangement to a person resident outside India, subject to the guidelines given in Annex.

- (f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in Annex-3.
- (g) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route of RBI, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non-Resident/Non-Resident India, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, ARCs, CICs, Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
- (ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer(KYC) check by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC-TRS.
- (iii)**Escrow:** AD Category – I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers / exit offers and delisting of shares. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/ provisions of the Companies Act, 1956 will be applicable.

6.5 **Prior permission of RBI in certain cases for transfer of security –**

- (i) The following instances of transfer of shares from resident to non-residents by way of sale require Reserve Bank approval:

- (a) Transfer of shares or convertible debentures of an Indian company engaged in financial services sector (i.e. Banks, NBFCs, Asset Reconstruction Companies, CICs, Insurance companies, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
 - (b) Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997.
 - (c) The activity of the Indian company whose securities are being transferred falls outside the automatic route and the approval of the FIPB has been obtained for the said transfer.
 - (d) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
 - (e) Transfer of equity instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, duly certified by AD Category – I bank, within 60 days from the date of receipt of the full and final amount of consideration.
- (ii) The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI:
- (a) Transfer of shares of companies engaged in sectors falling under the Government Route.
 - (b) Transfer of shares resulting in foreign investments in the Indian company, breaching the sectoral cap applicable.
- (iii) A person resident in India, who intends to transfer any security, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of shares by way of gift, the documents mentioned in Annex-4 should be enclosed. Reserve Bank considers the following factors while processing such applications:
- (a) The proposed transferee (donee) 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 .
- (e) The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during the calendar year.**
- (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

6.6 Conversion of ECB/Lumpsum Fee/Royalty/Import of capital goods by SEZs into Equity.

- (i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB)(excluding those deemed as ECB) in convertible foreign currency due for payment/repayment into shares/preference shares, subject to the following conditions and reporting requirements.
 - (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
 - (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
 - (c) Pricing of shares is as per SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively; and
 - (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 Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- (ii) General permission is also available for issue of shares/preference shares against lumpsum technical know-how fee, royalty, under automatic route or SIA/FIPB route, subject to pricing guidelines of SEBI/CCI and compliance with applicable tax laws.

(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.

7.0 ISSUE OF INSTRUMENTS.

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

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

7.3 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 share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

7.4 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 .

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

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

CHAPTER 3: CALCULATION, ENTRY ROUTE, CAPS, CONDITIONS, ETC. OF INVESTMENT

8.0 CALCULATION OF TOTAL FOREIGN INVESTMENT I.E. DIRECT AND INDIRECT FOREIGN INVESTMENT IN INDIAN COMPANIES.

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

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

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

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

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

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

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

(1) Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/investing company. For the purposes of explanation, it is clarified that this exception is being made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company.

(2) Illustration

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

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

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

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

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

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

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

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

(v)Additional conditions:

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

- (b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider for determining ownership and control such *inter-se* agreements when considering the case for granting approval for foreign investment.
- (c) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.
- (d) In the I& B and Defense sectors where the sectoral cap is less than 49%, the company would need to be ‘owned **and** controlled’ by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.
- (1) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term ‘largest Indian shareholder’, used in this clause, will include any or a combination of the following:
- (A) In the case of an individual shareholder,
- (I) The individual shareholder,
- (II) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
- (III) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
- (B) In the case of an Indian company,
- (I) The Indian company
- (II) A group of Indian companies under the same management and ownership control.

(2) For the purpose of this Clause, “Indian company” shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

(3) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (i) and (ii) of clause 8.3(v)(d)(1) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

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

(vi) The above mentioned policy and the methodology would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statutes or rules thereunder. Thus, for the present purposes this methodology will not be applicable in the Insurance Sector where it will continue to be governed by the relevant Regulation.

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

9.0 ENTRY ROUTES FOR INVESTMENT:

(i) Investments can be made by non-residents in the shares/convertible debentures/preference shares of an Indian company, through two routes; the Automatic Route and the Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment. Under the Government Route, prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required.

(ii) Investment would be subject to the ‘Previous/existing venture/tie-up condition’.

(iii) Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities in sectors with caps:

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

(b) An Indian company is being established with foreign investment and is owned by a non-resident entity or

(c) An Indian company is being established with foreign investment and is controlled by a non-resident entity or

(d) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc. or

(e) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc.

(f) It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

(g) It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and convertible preference shares, regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

10.0 CAPS ON INVESTMENTS

10.1 Investments can be made by non-residents in the capital of an Indian entity only to the extent of the percentage of the total capital. Thus investment can be prohibited in

some sectors/activities or their can be a restriction through a CAP on the investment for other sector/activities ,while in others there may not be any restrictions and the total 100% capital can be held by non resident entities. The caps in various sector(s)/activity are detailed out later in this regulation.

11.0 ENTRY CONDITIONS ON INVESTMENT

11.1 Investments can be allowed by non-residents in the capital of an Indian entity in certain sectors/activity with entry conditions. These entry conditions are then only applicable for investment by non-resident entities. The usual conditions are about minimum capital that is to be inducted/brought in, etc. The ENTRY CONDITIONS in various sector(s)/activity are detailed out later in this regulation.

12.0 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS

12.1 Besides the entry conditions on foreign investment, the investment/investors have to also comply with all relevant sectoral laws, regulations, conditions like obtaining of licence etc.

12.2 The security related conditions as contained in specific statutes will also have to be complied with.

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

13.0 DOWNSTREAM INVESTMENT BY INDIAN COMPANIES

13.1 The Policy for downstream investment by Indian companies seeks to lay down and clarify about compliance with the Foreign investment norms on entry route, conditionalities and sectoral caps. The ‘guiding principle’ is that downstream investment by companies ‘owned’ or ‘controlled’ by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream investment in Para 8 as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

13.2 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have

been detailed in Para 8 which enables determination of total foreign investment in any/all Indian Companies.

13.3 Definitions:

- (i) 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors.
- (ii) 'Downstream investment' means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Para 8. Para 8.3 provides the guidelines for calculation of indirect foreign investment with conditions specified in para 8.5
- (iii) 'Investing Company' means an Indian Company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings/securities.
- (iv) 'Foreign Investment' would have the same meaning as in Para 8

13.4 Guidelines for downstream investment by Investing Indian Companies 'owned or controlled by non resident entities' as per Para 8:

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

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

13.6. For Operating-cum- investing companies and investing companies (Para 14.4) and for companies as per para 14.5 above, downstream investments can be made subject to the following conditions:

- (i) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if equity shares/CCPS/CCD have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
- (ii) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;
- (iii) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;
- (iv) Investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

14.0 **GUIDELINES FOR CONSIDERATION OF FDI PROPOSALS BY FIPB:**

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

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

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

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

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

14.6 FIPB would consider each proposal in totality

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

- (i) whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;
- (ii) whether the proposal involves any export projection and if so the items of export and the projected destinations.
- (iii) Whether the proposal has any strategic or defence related considerations.

14.8 While considering proposals the following may be prioritised.

- (i) Items falling in infrastructure sector.
- (ii) Items which have an export potential.
- (iii) Items which have large scale employment potential and especially for rural people.
- (iv) Items which have a direct or backward linkage with agro business/farm sector.
- (v) Items which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.
- (vi) Proposals which result in induction of technology or infusion of capital.

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

- (i) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any
- (ii) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 76% or more) joint venture.
- (iii) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.
- (iv) In the case of fresh induction offerings/NRI equity and/or in cases of enlargement of foreign/NRI equity, in existing Indian companies whether there is a resolution

of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.

- (v) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement (i.e. whether by increase of paid up capital/authorized capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality.
- (vi) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.
- (vii) Whether the activity is an industrial or a service activity or a combination of both.
- (viii) Whether the items of activity involves any restriction by way of reservation for the small scale sector.
- (ix) Whether there are any sectoral restrictions on the activity
- (x) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

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

14.11 Where in case of a proposal (not being 100% subsidiary) foreign direct investment has been approved upto a designated percentage of foreign equity in the joint venture company, the percentage of resident entities would not be reduced while permitting induction of additional capital subsequently. Also in the case of approved activities, if the foreign investor(s) concerned wishes to bring in additional capital on later dates keeping the investment to such approved activities, FIPB would recommend such cases for approval on an automatic basis.

14.12 As regards proposal for private sector banks, the application would be considered only after “in principle” permission is obtained from the Reserve Bank of India (RBI).

15.0 **CONSTITUTION OF FIPB :**

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

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

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

CHAPTER 4: POLICY ON ROUTE, CAPS AND CONDITIONS:

16.0 **PROHIBITION ON 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 activities:
 - (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)
 - (f) Lottery Business, Gambling and Betting including Government /private lottery, online lotteries, casinos etc.
- (ii) It is clarified that “real estate business” 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, investment in the **form of FDI** is also prohibited in certain sectors such as (Annex-2) :
 - (a) Retail Trading (except single brand product retailing)
 - (b) Atomic Energy
 - (c) Lottery Business including Government /private lottery, online lotteries, etc.
 - (d) Gambling and Betting including casinos etc.
 - (e) Business of chit fund
 - (f) Nidhi company
 - (g) Trading in Transferable Development Rights (TDRs)
 - (h) Activities / sectors not opened to private sector investment.
- (iv) Besides foreign investment in any form, **foreign technology collaboration in any form** including licencing for franchise, trademark, brand

name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

AGRICULTURE

17.0 Agriculture & Animal Husbandry

17.1 100% FDI is allowed under automatic route in Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aquaculture and Cultivation of Vegetables & Mushrooms under controlled conditions and services related to agro and allied sectors.

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

17.2 Plantation - including tea plantation.

17.3 100% FDI is allowed in the Tea sector including tea plantations under Government route subject to the conditions of :

- (i) Compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of 5 years
- (ii) Prior approval of the State Government concerned in case of any future land use change.

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

INDUSTRY

18.0 MINING

18.1 100% FDI is allowed under the automatic route in Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; all other minerals subject to the Mines and Minerals(Development & Regulation) Act 1957.

18.2 Coal and Lignite

(i) 100% FDI is allowed under the automatic route in Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalisation) Act, 1973.

(ii) 100% FDI is allowed for setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.

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

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

(ii) Under the Industrial Policy Statement 1991, mining and production of minerals classified as “prescribed substances” and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Government of India Resolution No. 8/1(1)/97-PSU/1422 dated 6th October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon). FDI up to 74% was permitted with prior approval of the Government in pure value addition projects without mining and mineral separation as well as integrated projects comprising both mining & mineral separation and value addition.

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

(iv) FDI up to 100% will be allowed under Government route in mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).

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

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

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

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

MANUFACTURING

19.0 Manufacture of items reserved for production in Small Scale Sector

19.1 Any industrial undertaking, with or without FDI, which is not a Medium or Small Scale Enterprise as defined in the Micro, Small and Medium Enterprises Development Act, 2006, manufacturing items reserved for manufacture in the MSE sector (presently 21 items) as per the Industrial Policy, would require Government route where foreign investment is more than 24% in the equity capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to ‘Export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production’.

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

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

22.0 Defence Industry

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

- (i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence.
- (ii) Cases involving FDI will be considered by the FIPB and licences given by the Department of Industrial Policy & Promotion in consultation with Ministry of Defence.
- (iii) The applicant should be an Indian company / partnership firm.
- (iv) The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company / partnership firm being resident Indians.
- (v) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.
- (vi) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.
- (vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the foreign investor taking into account the category of weapons and equipment that are proposed to be manufactured.
- (viii) There would be a three-year lock-in period for transfer of equity from one foreign investor to another foreign investor (including NRIs & OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the FIPB and the Government.
- (ix) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.

- (x) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.
- (xi) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.
- (xii) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.
- (xiii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.
- (xiv) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.
- (xv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons / entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.
- (xvi) Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement by the Secretariat for Industrial Assistance in the Department of Industrial Policy & Promotion.

23.0 **POWER**

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

23.2 Generation and transmission of electric energy produced in-hydro electric, coal/lignite based thermal, oil based thermal and gas based thermal power plants.

23.3 Non-Conventional Energy Generation and Distribution.

22.4 Distribution of electric energy to households, industrial, commercial and other users.

23.5 This does not include generation, transmission and distribution of electricity produced in atomic power plant/atomic energy since private investment in this sector/activity is prohibited and is reserved for public sector.

23.6 Power Trading

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

SERVICES SECTOR.

24.0 **Advertising and Films**

24.1 100% FDI under the automatic route is allowed in Advertising sector

24.2 100% FDI under the automatic route is allowed in Film Industry including film financing, production, distribution, exhibition, marketing and associated activities related to film industry.

25.0 **Civil Aviation Sector**

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

25.2 For the purposes of the Civil Aviation sector:

- (i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;
- (ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes

- all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;
- (iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights.
 - (iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward.
 - (v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;
 - (vi) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;
 - (vii) "Scheduled air transport service", means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public.
 - (viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Chartered and Cargo airlines.
 - (ix) "Chartered" and "Cargo" airlines would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation.
 - (x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;
 - (xi) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

25.3 Policy for FDI in Civil Aviation sector

(i) Airports:

(a) Greenfield projects- FDI upto 100% is allowed under the automatic route.

(b) Existing projects- FDI upto 100% is allowed under Government route for FDI beyond 74%.

(ii) Air Transport Services:

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

(iii) FDI ceilings in Air Transport Services:

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

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

- (d) (a) Ground Handling Services- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed. FDI in on the automatic route upto 49% and on the Government route beyond 49% and upto 74%. This will be subject to sectoral regulations and security clearance.
- (b) Maintenance and Repair organizations; flying training institutes; and technical training institutions - FDI up to 100% allowed on the automatic route.

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

26.0 Asset Reconstruction Companies:

26.1 Persons resident outside India [other than Foreign Institutional Investors (FIIs)], can invest in the equity capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Automatic Route is not available

for such investment. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs and FDI is restricted to 49 per cent of the paid-up capital of the ARC.

26.2 However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest upto 40 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.

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

27.0 **Banking –Private sector**

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

27.2 The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

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

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

(i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent, aggregate limit for all FIIs cannot exceed 24 per cent, which can be raised to 49 per cent by the bank concerned passing a resolution by its Board of Directors followed by passing of a special resolution to that effect by its General Body.

(a) Thus, the FII investment limit will continue to be within 49 per cent.

(b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent and aggregate limit cannot exceed 10 per cent. However, NRI holding can be allowed up to 24 per cent provided the banking company passes a special resolution to the effect in the General Body.

- (c) Applications for foreign direct investment (FDI route) in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.
 - (d) Transfer of shares under FDI from residents to non-residents will continue to require approval of Foreign Investment Promotion Board (FIPB) under Foreign Exchange Management Act (FEMA).
 - (e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.
 - (f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to foreign investors as well.
- (ii) Setting up of a subsidiary by foreign banks
- (a) Foreign banks will be permitted to either have branches or subsidiaries not both.
 - (b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.
 - (c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.
 - (d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para 1(b) above.

- (e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.
- (f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI.

All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.

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

28.0 **Banking- Public Sector**

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

29.0 **Broadcasting**

29.1 Terrestrial Broadcasting FM (FM Radio): Foreign investment, including FDI, NRI and PIO investments and portfolio investments are permitted up to 20% equity for FM Radio's Broadcasting Services with prior approval of the Government subject to such terms and conditions as specified from time to time by Ministry of Information and Broadcasting for grant of permission for setting up of FM Radio Stations.

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

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

29.4 **Setting up hardware facilities such as up-linking, HUB**

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

- a) FDI (including investment by FII) up to 49% would be permitted under the Government route for setting up Up-linking HUB/ Teleports;
 - b) FDI up to 100% would be allowed under the Government route for Up linking a Non-News & Current Affairs TV Channel;
 - c) FDI (including investment by FII) up to 26% would be permitted under the Government route for Up-linking a News & Current Affairs TV Channel subject to the condition that the portfolio investment in the form of FII/ NRI deposits shall not be “persons acting in concert” with FDI investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- (ii) The above will be further subject to the Company permitted to uplink the channel shall certifying the continued compliance of this requirement through the Company Secretary at the end of each financial year.
 - (iii) FDI for Up-linking TV Channels will be subject to compliance with the Up-linking Policy of the Government of India notified by the Ministry of Information & Broadcasting from time to time.

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

31.0 Commodity Exchanges

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

31.2 For the purposes of the Commodity Exchanges:

- (i) “Commodity Exchange” is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.
- (ii) In terms of the Forward Contracts (Regulation) Act, 1952-
 - (a) ”recognized association” means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952.

- (b) “Association” means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.
- (c) “Forward contract” means a contract for the delivery of goods and which is not a ready delivery contract.
- (d) “Commodity derivative” means-
- a contract for delivery of goods, which is not a ready delivery contract; or
 - a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.

31.3 Policy for foreign investment in Commodity Exchanges

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

32.0 **Construction and maintenance**

32.1 100% FDI is allowed in Construction and maintenance of-roads, rail-beds, bridges, tunnels, pipelines, ropeways, ports, harbours and runways, waterways & water reservoirs, hydroelectric projects, power plants, industrial plant.

32.2 100 % FDI is permitted in construction and maintenance of Roads and highways offered on BOT basis including collection of toll.

32.3 Ports and Harbours: 100% FDI is allowed in:

- (i) Leasing of existing assets of ports

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

33.0 Development of Townships, Housing, Built-up infrastructure and Construction-development projects.

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

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

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

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

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

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

certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

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

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

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

33.7 The conditions as at para 31.1, 31.2 and 31.3 would not apply to Hotels & Tourism, Hospitals and SEZ's.

Note- FDI is not allowed in Real Estate Business.

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

34.1 100% FDI is allowed under the Government route.

34.2 This will be subject to existing Law i.e Indian Post Office Act 1998 and exclusion of activity relating to the distribution of letters.

35.0 Credit Information Companies (CIC)

35.1 For the purposes of CIC and in terms of the Credit Information Companies (Regulation) Act, 2005-

(i) "Credit information" means any information relating to—

(a) the amounts and the nature of loans or advances, amounts outstanding under credit cards and other credit facilities granted or to be granted, by a credit institution to any borrower;

(b) the nature of security taken or proposed to be taken by a credit institution from any borrower for credit facilities granted or proposed to be granted to him;

- (c) the guarantee furnished or any other non-fund based facility granted or proposed to be granted by a credit institution for any of its borrowers;
 - (d) the creditworthiness of any borrower of a credit institution;
 - (e) any other matter which the Reserve Bank may, consider necessary for inclusion in the credit information to be collected and maintained by credit information companies, and, specify, by notification, in this behalf;
- (ii) “Credit information company” means a company formed and registered under the Companies Act, 1956 (1 of 1956) and which has been granted a certificate of registration under sub-section (2) of Section 5.

35.2 Policy for foreign investment in Credit Information Companies

- (i) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.
- (ii) Foreign investment i.e. Foreign Direct Investment (FDI) under the FDI Scheme incorporated as Schedule 1 under regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 (FEMA Regulations) + investment by registered Foreign Institutional Investors (FII) under the Portfolio Investment Scheme incorporated as Schedule 2 under Regulation 5(2) of the FEMA Regulations, is allowed up to 49% under the Government route and regulatory clearance from RBI.
- (iii) Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.
- (iv) Such FII investment would be permitted subject to the conditions that:
 - (a) No single entity should directly or indirectly hold more than 10% equity.
 - (b) Any acquisition in excess of 1% will have to be reported to RBI as a reporting requirement; and
 - (c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

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

37.1 Hotels and Tourism related Industry

37.2 100% Foreign Investment is allowed under automatic route.

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

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

38.0 Industrial Parks both setting up and in established Industrial Parks.

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

38.2 FDI up to 100% on the automatic route is allowed in Construction development projects, etc. prescribing therein, inter-alia, the conditions for minimum capitalization, minimum area requirements and lock-in of original investment as per para 20 above.

38.3 For the purposes of Industrial Park:

- (i) “Industrial Park” is a project in which quality infrastructure facilities in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.
- (ii) “Infrastructure” refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.
- (iii) “Common Facilities” refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.
- (iv) “Allocable area” in the Industrial Park means-
 - (a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.

- (b) in the case of built up space- the floor area and built up space utilized for providing common facilities.
- (c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.
- (v) “Industrial Activity” means manufacturing, electricity, gas and water supply, post and telecommunications, software publishing, consultancy and supply, data processing, database activities and distribution of electronic content, other computer related activities, Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.

38.4 FDI up to 100% under the automatic route is allowed both in setting up and in established industrial parks and would not be subject to the conditionalities applicable for construction development projects etc. spelt out in Para 20 above provided the Industrial Parks meet with the under-mentioned conditions:

- (i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;
- (ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

39.0 **Insurance**

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

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

40.0 **Infrastructure Company in the Securities Market:**

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

- (i) There is a composite ceiling of 49 per cent for Foreign Investment, with a FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital;

- (ii) FDI will be allowed under the Government route; and
- (iii) FII can invest only through purchases in the secondary market.

41.0 **Non-Banking Finance Companies**

41.1 100% foreign investment in NBFC is allowed under the automatic route in the following activities:

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

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

- (i) US \$0.5 million for foreign equity capital upto 51% to be brought upfront
- (ii) US \$ 5 million for foreign equity capital more than 51% and upto 75% to be brought upfront
- (iii) US \$ 50 million for foreign equity capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.
- (iv) 100% foreign owned NBFC's with a minimum capitalisation of US\$ 50 million can set up step down subsidiaries for specific NBFC activities, without any restriction on number of operating subsidiaries and without bringing in additional capital.

(v) Domestic equity in the step down subsidiaries of 100% foreign owned holding companies may be scheduled by bringing 10 % domestic equity upfront and the balance domestic equity over a period of 24 months.

(vi) Joint Venture operating NBFC's that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vii) below.

(vii) Non- Fund based activities : US \$0.5 million for all permitted non-fund based NBFC's irrespective of the level of foreign investment subject to the following condition:

It would not be permissible for such a company to set up any subsidiary for any other activity, nor any equity it may contribute in an NBFC holding/operating company would be reckoned as domestic equity.

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

41.4 **Venture Capital (Fund:** An Foreign venture capital Investor(FCVI) may contribute upto 100% of the capital of a domestic venture capital fund(VCF/VCC) and may also set up a domestic asset management company to manage the fund. They are also allowed to invest in other companies subject to FDI Regulations. All investment are with prior approval of FIPB. Investment would be subject to SEBI and RBI regulations.

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

42.0 **Petroleum & Natural Gas Sector**

42.1 FDI up to 100% under the automatic route is permitted in exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products, actual trading and marketing of petroleum products, petroleum product pipelines, Natural Gas/LNG pipelines, market study and formulation and Petroleum refining in the private sector. This will be subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.

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

43.0 **Print Media**

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

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

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

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

- (i) This will also be subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.

43.4 Publication of facsimile edition of foreign newspapers:

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

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

45.0 **Security Agencies in Private sector**

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

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

46.0 **Satellites – Establishment and operation:** FDI upto 74% is allowed under Government route.

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

47.0 **Special Economic Zones and Free Trade Warehousing Zones:** 100% FDI is allowed under the automatic route without the conditionalities of Construction development project as per para 33 above.

47.1 This will be subject to the provisions of Special Economic Zones Act 2005 and the Foreign Trade Policy of the Department of Commerce.

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

49.0 **Telecommunication**

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

- (i) This is applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.

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

49.2 Security Conditions:

- (i) The Chief Officer In-charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.
- (ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor (Department of Telecommunications, Government of India) would be required if such information is to be provided to anybody else.
- (iii) For security reasons, domestic traffic of such entities as may be identified /specified by the licensor shall not be hauled/routed to any place outside India.
- (iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.

- (v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.
- (vi) The majority Directors on the Board of the company shall be Indian citizens.
- (vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.
- (viii) The Company shall not transfer the following to any person/place outside India:-
- (a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and
 - (b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).
- (ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.
- (x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.
- (xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).
- (xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.

- (xiii) The licensee company is not allowed to use remote access facility for monitoring of content.
- (xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.
- (xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.
- (xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.
- (xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.
- (xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.
- (xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.
- (xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.
- (xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this Press Note irrespective of the level of FDI.
- (xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed

telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

49.3 The conditions at para 49.2 above shall also be applicable to the existing companies operating telecom service(s) with the FDI cap of 49%.

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

49.5 FDI upto 74% is allowed in following activities

- ISP with gateways
 - Radio paging
 - End-to-End bandwidth
- (i) FDI upto 49% would be allowed under the automatic route and above that under the Government route.
- (ii) This will be subject to licensing and security requirements notified by the Ministry of Telecommunications.

49.6 FDI upto 100% under Government route is permitted for E-commerce activities. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

49.7 FDI upto 100% allowed for the following activities

- (i) ISP's not providing gateways i.e without gate-ways (both for satellite and marine cables)
- (ii) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I)
- (iii) Electronic Mail
- (iv) Voice Mail

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

- (ii) This will be subject to the condition that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.
- (iii) This will be subject to licensing and security requirements notified by the Ministry of Telecommunications.

50.0 Trading:

50.1 100% FDI is permitted under the automatic route for trading companies for the following activities:

- (i) Wholesale/cash & carry trading.
- (ii) Trading for exports.

50.2 100% FDI is permitted under the Government route for trading companies for the following activities:

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

50.3 Single Brand product trading: FDI up to 51%, under the Government route is allowed in retail trade of 'Single Brand' products. This is, inter alia, aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

- (i) FDI up to 51% in retail trade of 'Single Brand' products would be subject to the following conditions:
 - (a) Products to be sold should be of a 'Single Brand' only.
 - (b) Products should be sold under the same brand internationally.
 - (c) 'Single Brand' product-retailing would cover only products which are branded during manufacturing.
- (ii) Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The application would specifically indicate the product/ product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/ product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

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

51.0 Transport and Transport Support Services: 100% FDI under the automatic route is allowed for:

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

51.2 Transport Support Services:

- (i) Support services to land transport like operation of highway bridges, toll roads, and vehicular tunnels.
- (ii) Support services to water transport like operation and maintenance of piers, loading and discharging of vessels.
- (iii) Services incidental to transport like cargo handling incidental to land, water and air transport
- (iv) Rental and leasing of - motor vehicles without operator for passenger transport and freight transport, refrigerated/cold transport.
- (v) Renting of -transport equipment without operator, of other transport equipment.

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

CHAPTER 5: REMITTANCE,REPORTING,VIOLATION AND ACQUITITION OF IMMOVABLE PROPERTY

53.0 REMITTANCE AND REPATRIATION

53.1 Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies: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.

53.2 Repatriation of Dividend: Dividends are freely repatriable without any restrictions. The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

54.0 REPORTING OF FDI

54.1 Reporting of Inflow

- (i) An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form enclosed in Annex.
- (ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category – I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as Annex) 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.

54.2 Reporting of issue of shares

- (i) After issue of shares (including bonus and shares issued on rights basis) and shares issued under ESOP/fully and mandatorily convertible debentures / fully and mandatorily convertible preference shares, the Indian company has to file

Form FCGPR, enclosed in Annex, not later than 30 days from the date of issue of shares.

(ii) Part A of Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with Part A:

(a) A certificate from the Company Secretary of the company certifying that:

(A) all the requirements of the Companies Act, 1956 have been complied with;

(B) terms and conditions of the Government's approval, if any, have been complied with;

(C) the company is eligible to issue shares under these Regulations; and

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

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

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

(d) Part - B of Form FC-GPR should be filed on an annual basis by the Indian company, directly with the Reserve Bank⁶. This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information in Part B submitted by 31st July will pertain to all the investments made in the previous years up to March 31). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct / portfolio investment may be separately indicated.

(e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation / merger 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.

54.3 Reporting of transfer of shares

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

54.4 Reporting of Non-Cash

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

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

54.5 Reporting of FCCB/ADR/GDR Issues

The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the Form enclosed in Annex, 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.

55.0 ACQUISITION/TRANSFER/SALE OF IMMOVABLE PROPERTY AND REPATRIATION OF SALE PROCEEDS THEREOF

55.1 Acquisition and Transfer of Immovable Property in India

- (i) A person resident outside India who is a citizen of India (NRI) can acquire by way of purchase, any immovable property in India other than agricultural land / plantation property / farm house. He can transfer any immovable property other than agricultural or plantation property or farm house to:
 - (a) A person resident outside India who is a citizen of India, or
 - (b) A person of Indian origin resident outside India, or
 - (c) A person resident in India.
- (ii) He may transfer agricultural land / plantation property / farm house acquired by way of inheritance, only to Indian citizens permanently residing in India.
- (iii) Payment for acquisition of property can be made out of:
 - (a) Funds received in India through normal banking channels by way of inward remittance from any place outside India, or
 - (b) Funds held in any non-resident account maintained in accordance with the provisions of the Foreign Exchange Management Act, 1999 and the regulations made by Reserve Bank from time to time.
- (iv) Such payment cannot be made either by traveler's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.
- (v) A person resident outside India who is a person of Indian Origin (PIO) can acquire any immovable property in India other than agricultural land / farm house / plantation property:
 - (a) By way of purchase out of funds received by inward remittance through normal banking channels or by debit to his NRE / FCNR (B) / NRO account.
 - (b) Such payments cannot be made either by traveler's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.
 - (c) By way of gift from a person resident in India or a NRI or a PIO.

- (vi) A PIO may acquire any immovable property in India by way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations at the time of acquisition of the property.
- (vii) A PIO may transfer agricultural land / plantation property / farmhouse in India acquired by way of inheritance, by way of sale or gift to person resident in India who is a citizen of India.
- (viii) A PIO may transfer any immovable property other than agricultural land / Plantation property / farmhouse in India:
 - (a) By way of sale to a person resident in India.
 - (b) By way of gift to a person resident in India or a Non-Resident Indian or a PIO.

55.2 Purchase / Sale of Immovable Property by Foreign Embassies / Diplomats / Consulate General

Foreign Embassy / Consulate as well as Diplomatic personnel in India are allowed to purchase/ sell immovable property in India other than agricultural land / plantation property / farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase / sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through normal banking channels.

55.3 Acquisition of Immovable Property for carrying on a permitted activity

A branch, office or other place of business, (excluding a liaison office) in India of a foreign company established with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such activity provided that all applicable laws, rules, regulations or directions in force are duly complied with. The entity / person concerned is required to file a declaration in the Form IPI (Annex - 12) with the Reserve Bank, within ninety days from the date of such acquisition. The nonresident is eligible to transfer by way of mortgage the said immovable property to an AD Category – I bank as a security for any borrowing.

55.4 Repatriation of sale proceeds

- (i) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI / PIO, the authorized dealer will allow repatriation of sale proceeds outside India provided:

- (a) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of FEMA Regulations;
 - (b) the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or (b) the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident (External) Rupee Account for acquisition of the property; and
 - (c) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- (ii) In the case of sale of immovable property purchased out of Rupee funds, AD Category – I banks may allow the facility of repatriation of funds out of balances held by NRIs / PIO in their Non-Resident Rupee (NRO) accounts up to USD 1 million per financial year, subject to production of undertaking by the remitter and a certificate from the Chartered Accountant in the formats prescribed by the CBDT.

55.5 Prior permission to citizens of certain countries for acquisition or transfer of immovable property in India

- (i) No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, whether resident in India or outside India, shall acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of the Reserve Bank.
- (ii) Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance or purchase with the specific approval of the Reserve bank cannot transfer such property without prior permission of the Reserve Bank.

56.0 ADHERENCE TO GUIDELINES/ORDERS AND CONSEQUENCES OF VIOLATION

FDI is a current account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA 1999. Reserve Bank of India administers the FEMA 1999 and Directorate of Enforcement under the Ministry of Finance established by the Government of India is the authority for the enforcement of FEMA 1999. The Directorate takes up investigation in any contravention of FEMA

56.1 Penalties

56.1 (i) If any person contravenes any provision of FEMA 1999 vis-à-vis FDI Regulations violations, by way of contravening any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any conditions subject to which an authorization is issued by the Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lac Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

(ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means any body corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

(iii) Any Adjudicating Authority adjudging any contraventions under 25.1.1, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Government of India.

56.2 Adjudication and Appeals

(i) For the purpose of adjudication of any contravention of FEMA, the Government of India as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person

alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

- (ii) The Government of India may appoint as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, an Appealing Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.

56.3 **Compounding Proceedings**

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Government of India may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the Foreign Exchange Management Act 1999. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person. No contravention shall be compounded unless the amount involved in such contravention is quantifiable. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously and not later than 180 days from the date of application made to the Compounding Authority. Compounding Authority shall issue order specifying the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contraventions.