

July 1, 2008

To,
All Category - I Authorised Dealer banks

Madam / Sir,

Master Circular on Foreign Investment in India

Foreign investment in India is governed by sub-section (3) of Section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. The regulatory framework and instructions issued by the Reserve Bank of India have been compiled in this Master Circular. In addition to the above, this Master Circular also covers the following areas:

- (i) **Acquisition of immovable property** which is regulated in terms of Section 6(3) (i) of Foreign Exchange Management Act, 1999 read with Notification No. FEMA 21/ 2000-RB dated May 3, 2000;
- (ii) **Establishment of Branch/Liaison Office in India**, which is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Notification No. FEMA 22/ 2000-RB dated May 3, 2000;
- (iii) **Investment in capital of partnership firms or proprietary concern** which is regulated in terms of Section 2(h) of Section 47 of Foreign Exchange Management Act, 1999, read with Notification No. FEMA 24/2000-RB dated May 3, 2000.

2. This Master Circular consolidates the existing instructions issued by the Reserve Bank of India through A. P. (DIR Series) Circulars and Notifications under FEMA, in respect of the above areas. The list of underlying circulars/notifications is furnished in Appendix.

3. This Master Circular will stand withdrawn on July 1, 2009 and be replaced by an updated Master Circular on the subject on that date.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager-in-Charge

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| Section-I: | Foreign Direct Investments |
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| 1. Foreign Investment in India | <p>Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act (FEMA) 1999. Reserve Bank has issued Notification No. FEMA 20/2000-RB dated May 3, 2000¹ which contains the Regulations in this regard. This notification has been amended from time to time.</p> |
| 2. Entry routes for investments in India | <p>(i) Foreign investment is freely permitted in almost all sectors. Under Foreign Direct Investments (FDI) Scheme, investments can be made by non-residents in the shares / convertible debentures of an Indian Company, under two routes; Automatic Route and 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, Ministry of Finance, Foreign Investment Promotion Board (FIPB) is required. Entry route for non-resident investors in India as well as sector-specific investment limits in India are given in Annex-1.</p> <p>(ii) FDI Policy is formulated by the Government of India. The policy and procedures in respect of FDI in India is available in "<i>the Manual on Investing in India- Foreign Direct Investment, Policy & Procedures</i>". This document is available in public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department of Industrial Policy and Promotion— http://www.dipp.nic.in/manual/fdi_text_manual_nov_2006.pdf. FEMA Regulations prescribe the mode of investments i.e. manner of receipt of funds, issue of shares/convertible debentures and preference shares² and reporting of the investments to RBI.</p> |
| 3. Prohibition on investment in India | <p>(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</p> |

¹ Notification enclosed as Annex-16

² It is clarified that "shares" mentioned in this Circular means equity shares, "convertible debentures" means fully and mandatorily convertible debentures and "preference shares" means fully and mandatorily convertible preference shares, cf. AP (DIR Series) Circular Nos.73 & 74 dated June 8, 2007.

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| | <p>incorporated or not (such as Trusts) which is engaged or proposes to engage in the following activities³:</p> <ul style="list-style-type: none"> (i) Business of chit fund, or (ii) Nidhi Company, or (iii) Agricultural or plantation activities, or (iv) Real estate business, or construction of farm houses (v) Trading in Transferable Development Rights (TDRs). <p>(ii) It is clarified that Real Estate Business does not include development of townships, construction of residential/commercial premises, roads or bridges. It is further clarified that partnership firms/proprietorship concerns having investments as per FEMA regulations are not allowed to engage in Print Media sector.</p> <p>(iii) In addition to the above, investment in the form of FDI is also prohibited in certain sectors such as (Annex-2)⁴:</p> <ul style="list-style-type: none"> (i) Retail Trading (except single brand product retailing) (ii) Atomic Energy (iii) Lottery Business (iv) Gambling and Betting (v) Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (Other than Tea plantations). |
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³ As per notification no. FEMA 1/2000-RB dated May 3, 2000 (page no.92)

⁴ As per notification no. FEMA 20/2000-RB dated May 3, 2000 (page no.126)

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| <p>4. Eligibility for Investing in India</p> | <p>(i) A person⁵ resident outside India (other than a citizen of Pakistan) or an entity incorporated outside India, (other than an entity incorporated in Pakistan) can invest in India, subject to the FDI Policy of the Government of India. A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI Scheme, with prior approval of FIPB.</p> <p>(ii) Overseas Corporate Bodies (OCBs) are entities established outside India and predominantly owned by NRIs (at least 60% of the paid up capital). Erstwhile OCBs which are incorporated outside India and are not under adverse notice of Reserve Bank can make fresh investments under the FDI as incorporated non-resident entities, with the prior approval of Government if the investment is through Government Route and with the prior approval of Reserve Bank if the investment is through Automatic Route.</p> |
| <p>5. Type of instruments</p> | <p>(i) Indian companies can issue equity shares / convertible debentures and preference shares subject to pricing guidelines / valuation norms prescribed under FEMA Regulations.</p> |

⁵ A "person" is defined under FEMA (Section 2 u) as:

- (a) an individual,
 - (b) a Hindu undivided family,
 - (c) a company,
 - (d) a firm,
 - (e) an association of persons or a body of individuals, whether incorporated or not,
 - (f) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (g) any agency, office or branch owned or controlled by such person;
- "person resident outside India" means a person who is not resident in India;
 - "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;

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| | <p>(ii) Issue of other types of preference shares such as non-convertible, optionally convertible or partially convertible have to be in accordance with the guidelines applicable for External Commercial Borrowing (ECB). Since these instruments are denominated in rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread permissible for ECBs of corresponding maturity.</p> <p>(iii) As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy.</p> |
| <p>6. Investments in Small Scale Industrial units</p> | <p>(i) A foreign investor can invest in an Indian company which is a small scale industrial unit provided it is not engaged in any activity which is prohibited under the FDI policy. Such investments are subject to a limit of 24 per cent of paid-up capital of the Indian company/SSI Unit. An SSI Unit can issue equity shares / fully convertible preference shares / fully convertible debentures more than 24 per cent of its paid-up capital if:</p> <ul style="list-style-type: none"> a) It has given up its small scale unit status, b) It is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and c) It complies with the sectoral caps specified in Annex-1. <p>(ii) It is clarified that the company/SSI Unit would be reckoned as having given up its SSI status, if the investment in plant and machinery exceeds the limits prescribed under the Micro, Small and Medium Enterprises Development Act, 2006.</p> |
| | <p>(iii) An SSI Unit, which is an Export Oriented Unit or a unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park, can issue shares / convertible debentures / preference shares exceeding 24 per cent of the paid-up capital up to the sectoral caps specified in Annex-1.</p> |

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| <p>7. Investments in Asset Reconstruction Companies (ARCs)</p> | <p>(i) 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 under the Government Route only. <u>Automatic Route is not available for such investments</u>. Such investments have to be strictly in the nature of FDI. <u>Investments by FIIs are not permitted</u>. Further, FDI is restricted to 49 per cent of the paid up capital of the ARC.</p> <p>(ii) However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest up to 49 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue.</p> |
| <p>8. Investment in infrastructure companies in the Securities Market</p> | <p>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 :</p> <p>Foreign investment up to 49 per cent of the paid up capital, is allowed in these companies with a separate FDI cap of 26 per cent and FII cap of 23 per cent;</p> <ul style="list-style-type: none"> i) FDI will be allowed with specific prior approval of FIPB; and ii) FII can invest only through purchases in the secondary market. |
| <p>9. Investment in Credit Information Companies</p> | <p>Foreign investment in Credit Information Companies is permitted in compliance with the Credit Information Companies (Regulations) Act, 2005 and subject to the following :</p> <ul style="list-style-type: none"> i) The aggregate Foreign Investment in Credit Information Companies is permitted only up to 49 per cent of the paid up capital. ii) Foreign Investment upto 49 per cent is allowed only with the prior approval of FIPB and regulatory clearance from RBI. iii) Investment by SEBI Registered FIIs is permitted only through purchases in the secondary market to an extent of 24 per cent. |

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| | <p>iv) Investment by SEBI Registered FII to an extent of 24 per cent should be within the overall limit of 49 per cent for Foreign Investment.</p> <p>v) No FII can individually hold directly or indirectly more than 10 per cent of the equity.</p> |
| 10. Investment in Commodity Exchanges | <p>Foreign investment in Commodity Exchanges is permitted subject to the following conditions:</p> <p>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.</p> <p>ii) FDI is allowed with specific approval of the Government.</p> <p>iii) The FII purchases in equity of Commodity Exchanges is restricted to the secondary markets only.</p> <p>iv) Foreign Investment in Commodity Exchanges is also subject to compliance with the regulations issued, in this regard, by the Forward Market Commission.</p> |
| 11. Investment in Public Sector banks | <p>FDI and Portfolio Investment in nationalised banks are subject to overall statutory limits of 20 per cent as provided under Section 3 (2D) of the Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/80. The same ceiling would also apply in respect of such investments in State Bank of India and its associate banks.</p> |
| 12. Investments from Nepal & Bhutan | <p>NRIs, resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.</p> |
| 13. Issue of Rights / Bonus shares to erstwhile OCBs | <p>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 have to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Disclosure and</p> |

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| <p>14. Rights issue to erstwhile OCBs</p> <p>15. Additional allocation of rights shares by residents to non-residents</p> | <p>Investor Protection) Guidelines (in case of listed companies), etc.</p> <p>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.</p> <p>OCBs have been de-recognised as a class of investors with effect from September 16, 2003. Therefore, companies desiring to issue rights shares to such erstwhile OCBs will have to take specific prior permission from the Reserve Bank⁶. As such, entitlement of rights shares is not automatically available to OCBs. However, bonus shares can be issued to erstwhile OCBs without RBI approval.</p> <p>Existing non-resident shareholders are allowed to apply for issue of additional shares / convertible debentures / preference shares over and above their rights share entitlements. The investee company can allot the additional rights shares out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.</p> |
| <p>16. Acquisition of shares under Scheme of Amalgamation / merger</p> | <p>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 :</p> <p>(i) The percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap.</p> <p>(ii) The transferor company or the transferee or the new company is not engaged in activities which are prohibited in</p> |

⁶ Addressed to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

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| | terms of FDI policy (refer para 3 above). |
| 17. Issue of shares under Employees Stock Option Scheme (ESOPs) | <p>(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:</p> <p>(a) The scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India; and</p> <p>(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.</p> <p>(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, <u>other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior FIPB approval.</u> The issuing company is required to report the details of such issues to the concerned Regional Office of the Reserve Bank, within 30 days from the date of issue of shares.</p> |
| 18. Reporting of FDI | <p>(i) Reporting of inflow</p> <p>(a) 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 Reserve Bank not later than 30 days from the date of receipt in the Advance reporting form enclosed in Annex 6. The form can be also be downloaded from the Reserve Bank's website http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx.</p> <p>(b) 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</p> |

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| | <p>copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as Annex – 7) on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.</p> |
| | <p>(ii) Time frame within which shares have to be issued</p> <p>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 Reserve Bank on the merits of the case.</p> |
| | <p>(iii) Reporting of issue of shares</p> <p>(a) After issue of shares/convertible debentures/preference shares, the Indian company has to file Form FC-GPR enclosed in Annex-8, not later than 30 days from the date of issue. The form can also be downloaded from the Reserve Bank's website http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx.</p> <p>(b) Part A of Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorised Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with Part A:</p> |

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| | <p>(i) A certificate from the Company Secretary of the company certifying that</p> <ul style="list-style-type: none">(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 authorised dealers in India evidencing receipt of amount of consideration. <p>(ii) A certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.</p> <p>(c) The report of receipt of consideration as well as FC-GPR have to be submitted to the concerned Regional Office of the Reserve Bank under whose jurisdiction the registered office of the company is situated.</p> <p>(d) Part-B of FC-GPR should be filed on an annual basis by the Indian company, directly with the Reserve Bank⁷. This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/re-invested earnings/others in the Indian company made during the previous years (i.e. the information in Part B submitted by 31st July 2008 will pertain to all the investments made in the previous years up to March 31, 2008). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under Direct / portfolio investment may be separately indicated.</p> |
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⁷ Addressed to the Advisor, Balance of Payment Statistical Division, Department of Statistical Analysis & Information Management, Reserve Bank of India, C9, 8th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai – 400051.

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| | <p>(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 SEZs has to be reported in Form FC-GPR.</p> |
| 19. Issue Price | <p>Price of shares issued to persons resident outside India under the FDI Scheme, 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.</p> |
| 20. Foreign Currency Account | <p>Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a foreign currency account, with the prior approval of RBI.</p> |
| 21. Transfer of Shares and convertible debentures | <p>(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:-</p> <ol style="list-style-type: none"> a. A person resident outside India (Other than NRI and OCB) may transfer by way of <u>sale or gift</u> the shares or convertible debentures to any person resident outside India (including NRIs). b. NRIs and erstwhile OCBs may transfer by way of <u>sale or gift</u> the shares or convertible debentures held by them to another NRI. <p><i>In both the above cases, if the transferee has previous venture or tie-up in India through investment/technical collaboration/trade mark agreement in the <u>same field</u> in which the Indian company, whose shares are being</i></p> |

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| | <p><i>transferred, is engaged, he has to obtain prior permission of SIA/FIPB to acquire the shares. This restriction is, however, not applicable to the transfer of shares to International Financial Institutions (i.e. ADB, IFC, CDC, DEG) and transfer of shares to Indian company engaged in Information Technology Sector.</i></p> <p>c. A person resident outside India can transfer any security to a person resident in India by way of <u>gift</u>.</p> <p>d. A person resident outside India can sell the shares and convertible debentures of an Indian company on a <u>recognized Stock Exchange</u> in India through a registered broker.</p> |
| | <p>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 service sector (i.e. Banks, NBFC, Insurance, ARCs and infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations and Depositories) under private arrangement to a person resident outside India, subject to the guidelines given in Annex 3.</p> <p>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.</p> <p>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 buy-back and / or capital reduction scheme of the company. However, this General Permission is not available for transfer of shares / debentures of an entity engaged in any activity in <u>the financial service sector</u> (i.e. Banks, NBFCs, ARCs, Insurance</p> |

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| | <p>and infrastructure providers in the securities market such as Stock Exchanges, Clearing Corporations, etc.),</p> <p>(ii) Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC-TRS (enclosed in Annex-9). This Form needs to be submitted to the AD Category – I bank, which will forward the same to its link office. The link office will consolidate the Forms and submit a report to the Reserve Bank.</p> <p>(iii) AD Category – I banks have been given general permission to open Escrow account and Special account by non-resident corporates 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.</p> |
| <p>22. Prior permission of RBI in certain cases for transfer of shares/ convertible debentures</p> | <p>(i) 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 Bank⁸. While forwarding applications to Reserve Bank for approval for transfer of shares by way of gift, the documents mentioned in Annex-4 may be enclosed. Reserve Bank considers the following factors while processing such applications:</p> <ol style="list-style-type: none"> a. The transferee (donee) is eligible to hold such security under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated 3rd May 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 transferee (donee) are |

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

close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time. The current list is reproduced in Annex 5.

- e. The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year**.
- f. Such other conditions as stipulated by Reserve Bank in public interest from time to time.

(ii) The following instances of transfer of shares from residents to non-residents by way of sale requires RBI approval:

- i. Transfer of shares or convertible debentures of an Indian company engaged in financial sector (i.e. Banks, NBFCs, Asset Reconstruction Companies, Insurance and Infrastructure providers in the securities market such as Stock Exchanges, Clearing Corporations, etc.),
- ii. Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

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

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| <p>23. Conversion of ECB / Lumpsum Fee/Royalty/ Import of capital goods by SEZs into Equity</p> | <p>(i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) into shares/preference shares, subject to the following conditions and reporting requirements.</p> <ol style="list-style-type: none"> a. The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company, b. The foreign equity after conversion of ECB into equity is within the sectoral cap, if any, c. Pricing of shares is as per SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively. d. Compliance with the requirements prescribed under any other statute and regulation in force. |
| | <p>(ii) The conversion facility is available for ECBs availed under the Automatic or Approval Route. This would also be applicable to ECBs, due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators. General permission is also available for issue of shares/preference shares against lump-sum technical know-how fee, royalty, under automatic route or SIA / FIPB route, subject to pricing guidelines of SEBI/CCI and compliance with applicable tax laws.</p> <p>(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.</p> |
| | <p>(iv) Reporting</p> <p>Details of issue of shares against conversion of ECB has to be reported to the concerned Regional Office of the Reserve Bank, as indicated below:</p> <ol style="list-style-type: none"> a. In case of full conversion of ECB into equity, the company shall report the conversion in form FC-GPR to the concerned |

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| | <p>Regional Office 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 ECB-2 form. Once reported, filing of form ECB-2 in the subsequent months is not necessary.</p> |
| | <p>b. In case of partial conversion of ECB, the company shall report the converted portion in form FC-GPR to the concerned Regional Office 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 ECB-2 form. In the subsequent months, the outstanding balance of ECB shall be reported in ECB-2 form to DSIM.</p> <p>c. The SEZ unit issuing equity as mentioned in para (iii) above, should report the particulars of the shares issued in the form FC-GPR.</p> |
| 24. Remittance of sale proceeds | <p>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.</p> |
| 25. Remittance on winding up/ liquidation of Companies | <p>AD Category – I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up; under the provisions of the Companies Act, 1956. AD Category – I banks shall allow the remittance provided the applicant submits:-</p> <p>i. No objection or Tax clearance certificate from Income Tax</p> |

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| | <p>Department for the remittance.</p> <ul style="list-style-type: none"> ii. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for. iii. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956. iv. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance. |
| <p>26. Issue of shares by Indian companies under ADR / GDR</p> | <p>(i) Depository Receipts (DRs) are negotiable securities issued outside India by a Depository Bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded in 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, DRs are treated as FDI.</p> <p>(ii) Indian companies can raise foreign currency resources abroad through the issue of ADRs/GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.</p> <p>(iii) A company can issue ADRs/GDRs if it is eligible to issue shares to persons resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue</p> |

ADRs/GDRs.

(iv) 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 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.

(v) 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, (current rating applicable is AA(-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's);
- 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.

(vi) 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.

(vii) 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.

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| | <p>(viii) 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 as applicable to all shareholders exercising voting rights.</p> <p>(ix) Erstwhile OCBs who are not eligible to invest in India and entities prohibited to buy, sell or deal in securities by SEBI will <u>not be eligible to subscribe to ADRs / GDRs</u> issued by Indian companies.</p> <p>(x) The pricing of ADR / GDR issues should be made at a price not less than the higher of the following two averages:</p> <ol style="list-style-type: none"> i. The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; ii. The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date. <p>(ii) The “relevant date” means the date, thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81 (IA) of the Companies Act, 1956, to consider the proposed issue.</p> |
| <p>27. Two-way Fungibility Scheme</p> | <p>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.</p> |

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| <p>28. Sponsored ADR/GDR issue</p> | <p>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 ADR / GDR.</p> |
| <p>29. Reporting of ADR/GDR Issues</p> | <p>The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the form enclosed in Annex-10, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the form enclosed in Annex-11, to the Reserve Bank within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per Reserve Bank guidelines.</p> |

Section-II: Foreign Portfolio Investments

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| 1. Portfolio Investment Scheme (PIS) | <p>(i) Foreign Institutional Investors (FIIs) registered with SEBI and Non-resident Indians (NRIs) are eligible to purchase shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme (PIS).</p> <p>(ii) The FIIs who have been granted registration by SEBI should approach their designated AD Category - I bank (known as Custodian Bank), for opening a foreign currency account and/or a Non Resident Special Rupee Account.</p> <p>(iii) NRIs can approach the designated branch of any AD Category - I bank authorised by the Reserve Bank to administer the Portfolio Investment Scheme for permission to open a NRE/NRO account under the Scheme for routing investments.</p> |
| 2. Investment by FIIs under PIS | <p>Reserve Bank has given general permission to SEBI registered FIIs/sub-accounts to invest under the PIS.</p> <p>(i) Shareholding</p> <p>(a) Total shareholding of each FII/sub-account under this Scheme shall not exceed 10 per cent of the total paid up capital or 10 per cent of the paid up value of each series of convertible debentures issued by the Indian company.</p> <p>(b) Total holdings of all FIIs/sub-accounts put together shall not exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. This limit of 24 per cent can be increased to the sectoral cap / statutory limit, as applicable to the Indian company concerned, by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body.</p> |

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| <p>3.Short Selling by FIIs</p> | <p>(c) A domestic asset management company or portfolio manager, who is registered with SEBI as an FII for managing the fund of a sub-account can make investments under the Scheme on behalf of</p> <ul style="list-style-type: none"> i. a person resident outside India who is a citizen of a foreign state, or ii. a body corporate registered outside India; <p>Provided such investment is made out of funds raised or collected or brought from outside through normal banking channel. Investments by such entities shall not exceed 5 per cent of the total paid-up equity capital or 5 per cent of the paid-up value of each series of convertible debentures issued by an Indian company, and shall also not exceed the overall ceiling specified for FIIs.</p> <p>(ii) Prohibition on investments</p> <p>(a) FIIs are not permitted to invest in equity shares issued by an Asset Reconstruction Company. They are also not allowed to invest in any company which is engaged or proposes to engage in the following activities:</p> <ul style="list-style-type: none"> i) Business of chit fund, or ii) Nidhi Company , or iii) Agricultural or plantation activities or iv) Real estate business, or construction of farm houses v) Trading in Transferable Development Rights (TDRs). <p><i>"Real Estate Business" mentioned above, does not include development of townships, construction of residential/commercial premises, roads or bridges.</i></p> <p>Foreign Institutional Investors (FIIs) registered with SEBI and sub-accounts of FIIs are permitted to short sell, lend and borrow equity shares of Indian companies. Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed in that behalf by the Reserve Bank and the SEBI / other regulatory agencies from time to time. The above permission is subject to the following conditions:</p> |
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4.Exchange Traded Derivative Contracts

(a) The FII participation in short selling as well as borrowing / lending of equity shares will be subject to the current FDI policy and short selling of equity shares by FIIs shall not be permitted for equity shares which are in the ban list and / or caution list of Reserve Bank.

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

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

(i) SEBI registered FIIs are allowed to trade in all exchange traded derivative contracts on recognised Stock Exchanges in India subject to the position limits as prescribed by SEBI from time to time. The SEBI registered FII/sub-account may open a separate account under their Special Non-Resident Rupee Account through which all receipts and payments pertaining to trading/investment in exchange traded derivative contracts will be made (*including initial margin and mark to market settlement, transaction charges, brokerage, etc.*). Further, transfer of funds between the Special Non-Resident Rupee Account and the separate account maintained for the purpose of trading in exchange traded derivative contracts can be freely made. However, repatriation of the rupee amount will be made only through their Special Non-Resident Rupee Account subject to payment of relevant taxes. The AD Category – I banks have to keep proper records of the above mentioned separate account and submit them to Reserve Bank as and when required.

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

a. to open and maintain demat accounts with foreign

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| <p>5. Forward cover & cancellation and rebooking</p> | <p>depositories and to acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIIs;</p> <p>b. to remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and</p> <p>c. to liquidate such foreign sovereign securities if the need arises.</p> <p>(iii) Clearing Corporations have to report, on a monthly basis, the balances of foreign sovereign securities, held by them as non-cash collaterals of their clearing members to the Reserve Bank⁹. The report should be submitted by the 10th of the following month to which it relates.</p> <p>(i) Designated branches of AD Category – I banks maintaining accounts of FIIIs can provide forward cover with rupee as one of the currencies to such customers subject to the following conditions:</p> <p>a. FIIIs are allowed to hedge the market value of their entire investment in equity and/or debt in India as on a particular date. If a hedge becomes naked in part or full owing to shrinking of the value of the portfolio, for reasons other than sale of securities, the hedge may be allowed to continue to the original maturity, if so desired;</p> <p>b. FIIIs may be allowed to cancel and rebook forward contracts up to a limit of 2 per cent of the market value of their entire investment in equity and / or debt in India. The limit for calculating the eligibility for rebookings shall be based upon market value of the portfolio as at the beginning of the financial year (April – March). The outstanding contracts must be duly supported by underlying exposure at all times. These contracts may be rolled over on or before maturity. The monitoring of forward cover must be done on a fortnightly basis by the AD banks, and reported to the Reserve Bank on a monthly basis, as per the format prescribed.</p> |
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⁹ Addressed to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai.

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| <p>6. Margin requirements</p> | <p>c. the cost of hedge is met out of repatriable funds and /or inward remittance through normal banking channel;</p> <p>d. all outward remittances incidental to the hedge are net of applicable taxes.</p> <p>(ii) The eligibility for cover may be determined on the basis of the declaration of the FII. A review may be undertaken on the basis of market price movements, fresh inflows, amounts repatriated and other relevant parameters to ensure that the forward cover outstanding is supported by an underlying exposure. The AD Category – I bank has to ensure that (i) total forward contracts outstanding should not exceed the market value of the portfolio, and (ii) forward contracts permitted to be rebooked should not exceed 2 percent of the market value as determined at the beginning of the financial year.</p> <p>SEBI registered FIIs / sub-accounts are allowed to keep with the Trading Member / Clearing Member amount sufficient to cover the margins prescribed by the Exchange / Clearing House and such amounts as may be considered necessary to meet the immediate needs.</p> |
| <p>7. Accounts with AD Category – I banks</p> | <p>(i) FIIs/sub-accounts can open a Foreign Currency denominated Account and / or a Special Non-Resident Rupee Account with an AD Category – I bank, for the purpose of investment.</p> <p>(ii) They can transfer sums from the foreign currency account to the rupee account for making genuine investments in securities in terms of the SEBI (FII) Regulations, 1995.</p> <p>(iii) The sums may be transferred from foreign currency account to rupee account at the prevailing market rate and the AD Category - I bank may transfer repatriable proceeds (after payment of tax) from the rupee account to the foreign currency account.</p> <p>(iv) The Special Non-Resident Rupee Account may be credited with the proceeds of sale of shares / debentures, dated Government securities, Treasury Bills etc. Such credits are allowed, subject to the condition that the AD Category - I bank should obtain</p> |

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| | <p>confirmation from the investee company / FII concerned that tax at source, wherever necessary, has been deducted from the gross amount of dividend / interest payable / approved income to the share / debenture / Government securities holder at the applicable rate, in accordance with the Income Tax Act.</p> <p>(v) The Special Non-Resident Rupee Account may be debited for purchase of shares / debentures, dated Government securities, Treasury Bills etc., and for payment of fees to applicant FIIs' local Chartered Accountant / Tax Consultant where such fees constitute an integral part of their investment process.</p> |
| <p>8. Private placement with FIIs</p> | <p>SEBI registered FIIs have been permitted to purchase shares / convertible debentures of an Indian company through offer/private placement, subject to the ceilings prescribed, i.e. individual FII/sub account -10 per cent and all FIIs/sub-accounts put together -24 per cent of the paid-up capital of the Indian company and to the sectoral limits, as applicable. Indian company is permitted to issue such shares provided that:</p> <ol style="list-style-type: none"> i. in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents; and ii. in the case of issue by private placement, the price is not less than the price arrived at in terms of SEBI guidelines or guidelines issued by the erstwhile Controller of Capital Issues, as applicable. Purchases can also be made of PCDs / FCDs/ Right Renunciations / Warrants / Units of Domestic Mutual Fund Schemes. |
| <p>9. Allocation of funds</p> | <p>The SEBI registered FII shall restrict allocation of its total investment between equities and debt in the Indian capital market in the ratio of 70:30. The FII may form a 100% debt fund and get such fund registered with SEBI. Investment in debt securities by</p> |

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| | FII's are subject to limits, if any, stipulated by SEBI in this regard. |
| 10.Reporting of FII investments | <p>(i) An FII may invest in a particular share issue of an Indian company either under the FDI Scheme or the Portfolio Investment Scheme. The AD Category – I banks have to ensure that the FIIs who are purchasing the shares by debit to the special rupee accounts report these details separately in the LEC (FII) returns.</p> <p>(ii) The Indian company which has issued shares to FIIs under the FDI Scheme (for which the payment has been received directly into company's account) and the Portfolio Investment Scheme (for which the payment has been received from FIIs' account maintained with an AD Category – I bank in India) should report these figures separately under item no. 5 of Form FC-GPR (Annex-8) (Post issue pattern of shareholding) so that the details could be suitably reconciled for statistical / monitoring purposes.</p> <p>(iii) A daily statement in respect of all transactions (except derivative trade) have to be submitted by the custodian bank in floppy / soft copy in the prescribed format directly to Reserve Bank¹⁰ to monitor the overall ceiling / sectoral cap / statutory ceiling.</p> |
| 11.Investments by Non - Resident Indians (NRIs) | (i) NRIs are allowed to invest in shares of listed Indian companies in recognised Stock Exchanges under the PIS. NRIs can invest through designated ADs, on repatriation and non-repatriation basis under PIS route up to 5% of the paid up capital / paid up value of each series of debentures of listed Indian companies. The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent, if the General Body of the Indian company passes a special resolution to that effect. |

¹⁰ Addressed to the Chief General Manager, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.

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| | <p>(ii) The NRI investor has to take delivery of the shares purchased and give delivery of shares sold. Short Selling is not permitted.</p> |
| | <p>(iii) Payment for purchase of shares and/or debentures on repatriation basis has to be made by way of inward remittance of foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained in India. If the shares are purchased on non-repatriation basis, the NRIs can also utilise their funds in NRO account in addition to the above.</p> <p>(iv) The link office of the designated branch of an AD Category - I bank shall furnish to the Reserve Bank¹¹, a report on a daily basis on PIS transactions undertaken by it, such report can be furnished on-line or on a floppy to RBI.</p> |
| | <p>(v) Shares purchased by NRIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without prior approval of RBI.</p> <p>(vi) NRIs are allowed to invest in Exchange Traded Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India on non-repatriation basis subject to the limits prescribed by SEBI.</p> |
| <p>12. Monitoring of investment position by RBI</p> | <p>Reserve Bank monitors the investment position of FIIs/NRIs in listed Indian companies, reported by Custodian banks on a daily basis of the data furnished in Forms LEC (FII) and LEC(NRI).</p> |
| <p>13. Caution List</p> | <p>When the total holdings of FIIs/NRIs under the Scheme reach the trigger limit, which is 2 per cent below the applicable limit (for companies with paid-up capital of Rs. 1000 crores and above, the trigger limit is 0.5 per cent below the applicable limit), Reserve Bank will issue a notice to all designated branches of AD Category - I banks cautioning that any further purchases of shares of the</p> |

¹¹ Addressed to the Chief General Manager, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.

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| <p>14. Ban List</p> | <p>particular Indian company will require prior approval of Reserve Bank. Reserve Bank gives case-by-case approvals to FIIs for purchase of shares of companies included in the Caution List. This is done on a first-come-first-served basis.</p> <p>Once the shareholding by FIIs/NRIs reaches the overall ceiling / sectoral cap / statutory limit, Reserve Bank puts the company on the Ban List. Once a company is placed on the Ban List, no FII or NRI can purchase the shares of the company under the Portfolio Investment Scheme.</p> |
| <p>15. Investments by Overseas Corporate Bodies (OCBs)</p> | <p>With effect from November 29, 2001, OCBs are not permitted to invest under the PIS in India. Further, the OCBs which have already made investments under the Portfolio Investment Scheme are allowed to continue holding such shares / convertible debentures till such time these are sold on the stock exchange. OCBs have been de-recognised as a class of investors in India with effect from September 16, 2003.</p> |

Section-III: Foreign Venture Capital Investments

**Investments
by Venture
Capital Funds**

(i) A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from RBI under FEMA Regulations can invest in Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a Scheme floated by such IVCFs subject to the condition that the VCF should also be registered with SEBI.

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

(ii) FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, RBI permits the FVCI to open a foreign currency account or rupee account with a designated branch of an AD Category – I bank.

(iii) The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.

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

Section-IV: Other Foreign Investments

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| 1. Purchase of other securities by NRIs | <p>(i) On non-repatriation basis</p> <p>(a) NRIs can purchase shares / convertible debentures issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR / NRO account maintained with the AD Category - I bank.</p> <p>(b) NRI can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.</p> <p>(ii) On repatriation basis</p> <p>An NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.</p> |
| 2. Purchase of other securities by FIIs | Foreign Institutional Investors (FIIs) can buy dated Government securities / treasury bills, listed non-convertible debentures / bonds issued by Indian companies and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India. Purchase of debt instruments by FIIs are subject to limits notified by SEBI. |

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| 3. Investment by Multilateral Development Banks (MDBs) | <p>A Multilateral Development Bank (MDB) which is specifically permitted by Government of India to float rupee bonds in India can purchase Government dated securities.</p> |
| 4. Foreign Investment in Tier I and Tier II instruments issued by banks in India | <p>(i) FIIs registered with SEBI and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions.</p> <ul style="list-style-type: none"> a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII should not exceed the limit of 10 per cent of each issue. b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of the issue. c. Investment by FIIs in Rupee denominated Debt capital instruments (Tier II) shall be outside the limits stipulated by SEBI for FII investment in corporate debt instruments. d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments. <p>(ii) The issuing banks are required to ensure compliance with the conditions stipulated above at the time of issue. They are also required to comply with the guidelines notified by the Department of Banking Operations and Development (DBOD), Reserve Bank of India, from time to time.</p> <p>(iii) The issue-wise details of amount raised as Perpetual Debt Instruments qualifying for Tier I capital by the bank from FIIs / NRIs</p> |

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| | <p>are required to be reported in the prescribed format within 30 days of the issue to the Reserve Bank¹².</p> <p>(iv) Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be outside the limit prescribed by SEBI for investment in corporate debt instruments. However, investment by FIIs in these instruments will be subject to a separate ceiling of USD 500 million.</p> <p>(v) The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated banks respectively, to the Reserve Bank of India through the soft copy of the LEC Returns.</p> |
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¹² Addressed to the Chief General Manager, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001.

Part II
Acquisition and Transfer of Immovable Property in India.

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| 1. Acquisition and Transfer of Immovable Property in India | <p>(i) A person resident outside India who is a citizen of India (NRI¹³) 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:</p> <ul style="list-style-type: none">i. A person resident outside India who is a citizen of India orii. A person of Indian origin resident outside India oriii. A person resident in India. <p>(ii) He may transfer agricultural land / plantation property / farm house acquired by way of inheritance, only to Indian citizens permanently residing in India.</p> <p>(iii) Payment for acquisition of property can be made out of:</p> <ul style="list-style-type: none">i. Funds received in India through normal banking channels by way of inward remittance from any place outside India orii. 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 of India from time to time. <p>(iv) Such payment <u>cannot be made</u> either by traveller's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.</p> |
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¹³ It is clarified that a person resident outside India, who is a citizen of India is treated as NRI for the purpose of this part of the Circular.

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| | <p>(v) A person resident outside India who is a person of Indian Origin (PIO¹⁴) can acquire any immovable property in India other than agricultural land / farm house / plantation property :-</p> <ol style="list-style-type: none"> i. 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. ii. Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically mentioned above. iii. By way of gift from a person resident in India or a NRI or a PIO. |
| | <p>(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.</p> |
| | <p>(vii) A PIO may transfer any immoveable property other than agricultural land/Plantation property/farmhouse in India</p> <ol style="list-style-type: none"> 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. <p>(viii) A PIO may transfer agricultural land / plantation property / farmhouse in India by way of sale or gift to person resident in India who is a citizen of India.</p> |

¹⁴ 'A person of Indian origin' means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who

(i) at any time, held Indian passport; or

(ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);

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| 2. Purchase / Sale of Immovable Property by Foreign Embassies / Diplomats / Consulate General | <p>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 banking channel.</p> |
| 3. Acquisition of Immovable Property for carrying on a permitted activity | <p>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 / concerned person 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 non-resident is eligible to transfer by way of mortgage the said immovable property to an AD Category – I bank as a security for any borrowing.</p> |
| 4.Repatriation of sale proceeds | <p>(i) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI / PIO, the authorised dealer will allow repatriation of sale proceeds outside India provided:</p> <ul style="list-style-type: none"> 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; |

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| | <p>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 account for acquisition of the property; and</p> <p>c. In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.</p> <p>(iii) 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 US Dollar 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.</p> |
| <p>5. Prior permission to citizens of certain countries for acquisition or transfer of immovable property in India</p> | <p>(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 Reserve Bank.</p> <p>(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.</p> |

Part III
Establishment of Branch/Liaison/Project Offices in India

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| 1. Application to RBI | <p>Companies incorporated outside India, desirous of opening a Liaison/Branch Office in India have to make an application in form FNC-1 (Annex 13) to the Reserve Bank¹⁵, along with the following documents:</p> <ul style="list-style-type: none">• English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy/ Notary Public in the Country of Registration.• Latest Audited Balance Sheet of the applicant entity. |
| 2. Liaison Offices | <p>(i) Companies which are incorporated outside India can establish Liaison Office in India with the specific approval of the Reserve Bank. A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by the Regional Office of the Reserve Bank under whose jurisdiction the office is set up. A Liaison Office can undertake the following activities in India:</p> <ul style="list-style-type: none">i. Representing in India the parent company/group companies.ii. Promoting export import from/to India. |

¹⁵ Addressed to the Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai 400 001.

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| | <ul style="list-style-type: none"> iii. Promoting technical/financial collaborations between parent/group companies and companies in India. iv. Acting as a communication channel between the parent company and Indian companies <p>(ii) Liaison/representative offices have to file Annual Activity Certificates from the Chartered Accountants to the Regional Office of the Reserve Bank. The Certificate is obtained to ensure that the Liaison Office has undertaken only those activities that have been approved by the Reserve Bank.</p> |
| 3. Liaison Office of foreign Insurance Companies | <p>Foreign Insurance companies can establish Liaison Offices in India after obtaining approval from the Insurance Regulatory and Development Authority. Such Insurance companies have been given general permission under FEMA for establishing Liaison Offices in India.</p> |
| 4. Branch Offices | <p>(i) Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent/group companies and undertake the following activities in India:</p> <ul style="list-style-type: none"> i. Export/Import of goods¹⁶ ii. Rendering professional or consultancy services. iii. Carrying out research work, in areas in which the parent company is engaged. iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company. v. Representing the parent company in India and acting as buying/selling agent in India. vi. Rendering services in Information Technology and development of software in India. vii. Rendering technical support to the products supplied by |

¹⁶ Procurement of goods for export and sale of goods after import are allowed only on wholesale basis.

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| | <p>parent/group companies.</p> <p>(ii) Retail trading activities of any nature is not allowed for a Branch Office in India.</p> |
| | <p>(iii) A Branch Office is not allowed to carry out manufacturing, processing activities in India, directly or indirectly.</p> <p>(iv) Branch Offices are permitted to acquire property for their own use and to carry out the permitted /incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years. Entities from Nepal are allowed to establish only Liaison Offices in India.</p> <p>(v) Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.</p> <p>(vi) Branch Offices have to submit Annual Activity Certificates from Chartered Accountants to RBI.</p> |
| <p>5. Branch Office in Special Economic Zones (SEZs)</p> | <p>(i) RBI has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:</p> <ol style="list-style-type: none"> i. such units are functioning in those sectors where 100 per cent FDI is permitted; ii. such units comply with part XI of the Companies Act (Section 592 to 602); iii. such units function on a stand-alone basis. <p>(ii) In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an AD Category – I bank with the documents mentioned in paragraph 11 ("Closure of Office") except the copy of RBI approval.</p> |

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| 6. Branches of Banks | Foreign Banks do not require approval under FEMA, if such Bank has obtained necessary approval under the provisions of the Banking Regulation Act, 1949 from the Reserve Bank. |
| 7. Project Offices | <p>Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and</p> <ol style="list-style-type: none"> i. the project is funded directly by inward remittance from abroad; or ii. the project is funded by a bilateral or multilateral International Financing Agency; or iii. the project has been cleared by an appropriate authority; or iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project. <p>However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank for approval.</p> |
| 8. Opening of Foreign Currency Account | <p>AD Category – I banks can open non-interest bearing Foreign Currency Account for Project Offices in India subject to the following:</p> <ol style="list-style-type: none"> i. The Project Office has been established in India, with the general/ specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority, ii. The contract under which the project has been sanctioned, specifically provides for payment in foreign currency, iii. Each Project has only one Foreign Currency Account, iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/group company abroad or bilateral/ multilateral international financing agency. v. The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the concerned branch of the AD. |

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| <p>9. Intermittent remittances by Project Offices in India</p> | <p>Further, the Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.</p> <p>vi. The Foreign Currency account has to be closed at the completion of the Project.</p> <p>(i) AD Category – I bank can permit intermittent remittances by Project Offices pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:</p> <ul style="list-style-type: none"> i. The Project Office submits an Auditors' / Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc. ii. An undertaking from the Project Office that the remittance will not, in any way, affect the completion of the Project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad. <p>(ii) Inter Project transfer of funds requires prior permission of the concerned Regional Office of the Reserve Bank under whose jurisdiction the Project Office is situated.</p> |
| <p>10. General conditions</p> | <p>(i) Partnership/Proprietary concerns set up abroad are not allowed to establish Branch/Liaison Offices in India.</p> <p>(ii) Branch/Liaison/Project Offices are allowed to open non-interest bearing current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.</p> <p>(iii) Transfer of assets of Liaison/Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.</p> |

11. Closure of Offices

(i) At the time of winding up of the Liaison Offices, the company has to approach the respective Regional Office of the Reserve Bank with the following documents :

- i. Copy of the Reserve Bank's permission for establishing the Office in India;
- ii. Auditor's certificate,—
 - 1) indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
 - 2) confirming that all liabilities in India including arrears of gratuity and other benefits to employees etc. of the branch/office have been either fully met or adequately provided for;
 - 3) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India;
- iii. No-objection or Tax clearance certificate from Income-tax authority for the remittance; and
- iv. Confirmation from the applicant that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.

Once RBI's Regional Office grants approval, AD Category – I banks can allow remittance of surplus.

(ii) At the time of closure of Branch Offices, the entities have to approach the Central Office of the Reserve Bank for approval, with the same set of documents as mentioned above.

Part IV

Investment in Partnership Firm / Proprietary Concern

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| 1. Investment in Partnership Firm / Proprietary Concern | A Non-Resident Indian ¹⁷ (NRI) or a Person of Indian Origin ¹⁸ (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 <ol style="list-style-type: none">i. Amount is invested by inward remittance or out of NRE / FCNR / NRO account maintained with Authorised Dealers / Authorised banks.ii. The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.iii. Amount invested shall not be eligible for repatriation outside India. |
| 2. Investments with repatriation benefits | NRIs / PIO may seek prior permission of Reserve Bank ¹⁹ for investment in sole proprietorship concerns / partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India. |
| 3. Investment by non-residents other than NRIs / PIO | A person resident outside India other than NRIs / PIO may make an application and seek prior approval of Reserve Bank (addressed to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai), for making investment by way of contribution to the capital of |

¹⁷ 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;

¹⁸ 'Person of Indian Origin' means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if

- a) he at any time held Indian passport; or
- b) he or either of his parents or any of his grand - parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

¹⁹ Addressed to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

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| | a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India. |
| 4.Restrictions | An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom or engaged in Print Media. |

Sectoral Cap on Investments by Persons Resident Outside India

| Sector | | Investment Cap | Description of Activity/Items/Conditions |
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| 1. | Private Sector Banking | 74% | Subject to guidelines issued by RBI from time to time |
| 2. | Non-Banking Financial Companies | 100% | FDI /NRI investments allowed in the following 18 NBFC activities shall be as per the levels indicated below : |
| | | | a) Activities covered |
| | | | <ol style="list-style-type: none"> 1. Merchant Banking 2. Under writing 3. Portfolio Management Services 4. Investment Advisory Services 5. Financial Consultancy 6. Stock-broking 7. Asset Management 8. Venture Capital 9. Custodial Services 10. Factoring 11. Credit Rating Agencies 12. Leasing & Finance 13. Housing Finance 14. Forex-broking 15. Credit Card Business 16. Money-changing Business 17. Micro-credit 18. Rural credit |
| | | | b) Minimum Capitalisation norms for fund based NBFCs |
| | | | i) for FDI up to 51%, US \$ 0.5 million to be brought in upfront |
| | | | ii) If the FDI is above 51 % and up to 75 %, US \$ 5 million to be brought upfront |
| | | | iii) If the FDI is above 75 % and up to 100 %, US \$ 50 million out of which \$ 7.5 million to be brought in upfront and the balance in 24 months |
| | | | c) Minimum Capitalisation norms for non-fund based activities |
| | | | Minimum Capitalisation norm of US\$0.5 million is applicable in respect of non-fund based NBFCs with foreign investment. |
| | | | d) Foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital) |

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| | | | e) | Joint Venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capital inflow i.e., (b)(i) and (b)(ii) above. |
| | | | f) | FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would issue appropriate guidelines in this regard. |
| 3. | Insurance | 26% | | FDI up to 26% in the Insurance sector is allowed on the automatic route subject to obtaining license from Insurance Regulatory & Development Authority (IRDA) |
| 4. | Telecommunications | 49% | i) | In basic, Cellular, Value Added Services, and Global Mobile Personal Communications by Satellite, FDI is limited to 49% subject to licensing and security requirements and adherence by the companies (who are investing and the companies in which the investment is being made) to the license conditions for foreign equity cap and lock-in period for transfer and addition of equity and other license provisions. |
| | | | ii) | ISP with gateways, radio paging and end-to-end bandwidth, FDI is permitted up to 74% with FDI, beyond 49% requiring Government approval. These services would be subject to licensing and security requirements. |
| | | | iii) | No equity cap is applicable to manufacturing activities. |
| | | | iv) | FDI up to 100% is allowed for the following activities in the telecom sector: |
| | | | a) | ISPs not providing gateways (both for satellite and submarine cables) |
| | | | b) | Infrastructure Providers providing dark fibre (IP Category 1) |
| | | | c) | Electronic Mail, and |
| | | | d) | Voice Mail |
| | | | | The above would be subject to the following conditions: |
| | | | a) | FDI up to 100% is allowed subject to the condition that such companies would divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. |
| | | | b) | The above services would be subject to licensing and security requirements, wherever required |
| | | | c) | Proposal for FDI beyond 49% shall be considered by FIPB on case-to-case basis. |
| 5. | (i) Petroleum Refining (Private Sector) | 100% | | FDI permitted up to 100 % in case of private Indian companies. |
| | (ii) Petroleum Product Marketing | 100% | | Subject to the existing sectoral policy and regulatory framework in the oil-marketing sector. |
| | (iii) Oil Exploration in both small | 100% | | Subject to and under the policy of Government on private participation in – |

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| | | and medium sized fields | | a) exploration of oil and b) the discovered fields of national oil companies. |
| | (iv) | Petroleum Product Pipelines | 100% | Subject to and under the Government Policy and regulations thereof. |
| 6. | | Housing and Real Estate | 100% | ONLY NRIs are allowed to invest in the areas listed below: |
| | | | | a) Development of serviced plots and construction of built-up residential premises |
| | | | | b) Investment in real estate covering construction of residential and commercial premises including business centres and offices |
| | | | | c) Development of townships |
| | | | | d) City and regional level urban infrastructure facilities, including both roads and bridges |
| | | | | e) Investment in manufacture of building materials |
| | | | | f) Investment in participatory ventures in (a) to (e) above |
| | | | | g) Investment in housing finance institutions which is also opened to FDI as an NBFC. |
| 7. | | Coal and Lignite | | i) Private Indian companies setting up or operating power projects as well as coal and lignite mines for captive consumption are allowed FDI up to 100%. |
| | | | | ii) 100% FDI is allowed for setting up coal processing plants 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. |
| | | | | iii) FDI up to 74% is allowed for exploration or mining of coal or lignite for captive consumption. |
| | | | | iv) In all the above cases, FDI is allowed up to 50% under the automatic route subject to the condition that such investment shall not exceed 49% of the equity of a PSU. |
| 8. | | Venture Capital Fund (VCF) and Venture Capital Company (VCC) | | Offshore Venture Capital Funds/companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI. |
| 9. | | Trading | | Trading is permitted under automatic route with FDI up to 51% provided it is primarily export activities, and the undertaking is an export house/ trading house / super trading house/ star trading house. However, under the FIPB route: |
| | | | | i) 100% FDI is permitted in case of trading companies for the following activities: |
| | | | | a) exports; |
| | | | | b) bulk imports with export/ ex-bonded warehouse sales; |
| | | | | c) cash and carry wholesale trading; |
| | | | | d) other import of goods or services provided at least 75% is for procurement and sale of the |

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| | | | | same group and not for third party use or onward transfer/ distribution/sales. |
| | | | ii) | The following kinds of trading are also permitted, subject to provisions of Exim Policy. |
| | | | a) | Companies for providing after sales services (that is not trading per se) |
| | | | b) | Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their Joint ventures in which they have equity participation in India |
| | | | c) | Trading of hi-tech items/items requiring specialised after sales service |
| | | | d) | Trading of items for social sector |
| | | | e) | Trading of hi-tech, medical and diagnostic items |
| | | | f) | Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specifications, a company can market that item under its brand name |
| | | | g) | Domestic sourcing of products for exports |
| | | | h) | 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 facilities commences simultaneously with test marketing. |
| | | | i) | FDI up to 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in five years, if these companies are listed in other parts of the world. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading. |
| 10. | Power | 100% | | FDI allowed up to 100 % in respect of projects relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of foreign direct investment. |
| 11. | Drugs & Pharmaceuticals | 100% | | FDI permitted up to 100% for manufacture of drugs and pharmaceuticals provided the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell/tissue targeted formulations. FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA technology and specific cell/tissue targeted formulations will require prior Govt. approval. |
| 12. | Road and highways, Ports and harbours | 100% | | In projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbours. |

| | | | |
|-----|--------------------------------|------|--|
| 13. | Hotel & Tourism | 100% | The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/ or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and Convention/Seminar units and organisations. |
| | | | For foreign technology agreements, automatic approval is granted if |
| | | | i) Up to 3% of the capital cost of the project is proposed to be paid for technical and consultancy |
| | | | ii) Up to 3% of the net turnover is payable for franchising and marketing/publicity support fee, and |
| | | | Up to 10% of gross operating profit is payable for management fee, including incentive fee. |
| 14. | Mining | 74% | i) For exploration and mining of diamonds and precious stones FDI is allowed up to 74 % under automatic route |
| | | 100% | ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing FDI is allowed up to 100 % under automatic route |
| | | | iii) Press Note 18 (1998 series) dated 14/12/98 would not be applicable for setting up 100 % owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral. |
| 15. | Advertising | 100% | Advertising sector - FDI up to 100% allowed on the automatic route |
| 16. | Films | 100% | Film Sector (Film production, exhibition and distribution including related services/products) FDI up to 100% allowed on the automatic route with no entry-level condition |
| 17. | Airports | 74% | Govt. approval required beyond 74% |
| 18. | Mass Rapid Transport Systems | 100% | FDI up to 100% is permitted on the automatic route in mass rapid transport system in all metros including associated real estate development |
| 19. | Pollution Control & Management | 100% | In both manufacture of pollution control equipment and consultancy for integration of pollution control systems is permitted on the automatic route |

| | | | | |
|-----|---|---------------------------------|---|---|
| 20. | Special Economic Zones | 100% | All manufacturing activities except: | |
| | | | i) | Arms and ammunition , Explosives and allied items of defence equipments, Defence aircrafts and warships, |
| | | | ii) | Atomic substances, Narcotics and Psychotropic Substances and hazardous Chemicals, |
| | | | iii) | Distillation and brewing of Alcoholic drinks and |
| | | | iv) | Cigarette/cigars and manufactured tobacco substitutes. |
| | | | | |
| 21. | Any other Sector/ Activity | 100 % | if not included in Annex 2 (A) | |
| | | | | |
| 22. | Air Transport Services (Domestic Airlines) | 100% for NRIs 49% for others | No direct or indirect equity participation by foreign airlines is allowed | |
| | | | | |
| 23. | Townships, housing, built-up infrastructure and construction - development projects The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure. | 100% | The investment shall be subject to the following guidelines: | |
| | | | (a) | Minimum area to be developed under each project shall be as under : |
| | | | (i) | In case of development of serviced housing plots - 10 hectares. |
| | | | (ii) | In case of construction -development project - 50,000 sq.mtrs. |
| | | | (iii) | In case of combination project, any one of the above two conditions. |
| | | | (b) | The investment shall 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. |
| | | | (c) | 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 shall not be permitted to sell undeveloped plots. |
| | | | (d) | The project shall conform to the norms and standards, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government / Municipal / Local Body concerned. |

| | | | |
|--|--|--|--|
| | | | (e) 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. |
| | | | (f) The State Government / Municipal / Local Body concerned, which approves the building / development plans, shall monitor compliance of the above conditions by the developer. |
| | | | Note: 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. |

| Annex-2 | |
|--|--|
| (PART I, Section I, para 3) | |
| Sectors/Activities prohibited/restricted under FDI Policy | |
| (A) | List of Activities for which Automatic Route of RBI for investment from person resident outside India is not available |
| 1. | Petroleum Refining (except for private sector oil refining), Natural Gas / LNG Pipelines |
| 2. | Investing companies in Infrastructure & Services Sector |
| 3. | Defence and Strategic Industries |
| 4. | Atomic Minerals |
| 5. | Print Media |
| 6. | Broadcasting |
| 7. | Postal services |
| 8. | Courier Services |
| 9. | Establishment and Operation of satellite |
| 10. | Development of Integrated Township |
| 11. | Tea Sector |
| 12. | Asset Reconstruction Companies |
| (B) | List of activities or items for which FDI is prohibited |
| 1. | Retail Trading |
| 2. | Atomic Energy |
| 3. | Lottery Business |
| 4. | Gambling and Betting |
| 5. | Housing and Real Estate business |
| 6. | Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (Other than Tea plantations) |

Annex-3

(PART I, Section I, para 21)

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

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

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

2. Pricing Guidelines

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

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

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

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

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

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

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

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

- (a)** Where the shares of an Indian company are traded on stock exchange,
- i) The sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock exchange;
 - ii) if the transfer is other than that referred to in clause (i), the price shall be arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 percent variation. Where, however, the shares are being

sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the objective of passing management control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by up to a ceiling of 25 percent over the price arrived at as above,

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

i) if the consideration payable for the transfer does not exceed Rs.20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares, and

ii) if the amount of consideration payable for the transfer exceeds Rs.20 lakh per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:

A) a price based on earning per share (EPS linked to the Price Earning (P/E) multiple ,or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher,

or

B) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen based trading system

or

C) where the shares are not listed on any stock exchange, at a price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a Merchant Banker in Category 1 registered with Securities and Exchange Board of India.

Explanation:

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

ii) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares issued and paid up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares issued and paid up. The NAV so calculated shall be used in conjunction with the

average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.

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

3. Responsibilities / Obligations of the parties

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

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

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

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

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

5. Documentation

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

5.1 For sale of shares by a person resident in India

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
- iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. Copy of Broker's note if sale is made on Stock Exchange
- vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

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

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

- v. No Objection/Tax Clearance Certificate from Income Tax authority/Chartered Account.
- vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

6. Reporting requirements

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

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

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

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

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

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

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

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

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI for listed companies and unlisted companies, respectively.
- vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.²⁰

²⁰ AP (DIR Series) Circular No. 08 dated August 25, 2005

Definition of "relative" as given in Section 6 of Companies Act, 1956.

- ◆ A person shall be deemed to be a relative of another, if, and only if:
 - (a) they are members of a Hindu undivided family ; or
 - (b) they are husband and wife ; or
 - (c) the one is related to the other in the manner indicated in Schedule IA (as under)
 1. Father.
 2. Mother (including step-mother).
 3. Son (including step-son).
 4. Son's wife.
 5. Daughter (including step-daughter).
 6. Father's father.
 7. Father's mother.
 8. Mother's mother.
 9. Mother's father.
 10. Son's son.
 11. Son's son's wife.
 12. Son's daughter.
 13. Son's daughter's husband.
 14. Daughter's husband.
 15. Daughter's son.
 16. Daughter's son's wife.
 17. Daughter's daughter.
 18. Daughter's daughter's husband.
 19. Brother (including step-brother).
 20. Brother's wife.
 21. Sister (including step-sister).
 22. Sister's husband.

Annex-7

(PART I, Section I, para 18 (i) (b))

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

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

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

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

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

Date :

Place:

Stamp :

FC-GPR

(PART I, Section I, para 18 (iii))

PART - A

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

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

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

| | | |
|----------|--|----------------------------------|
| 2. | Description of the main business activity NIC Code | |
| | Location of the project and NIC code for the district where the project is located | |
| | Percentage of FDI allowed as per FDI policy | |
| | State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable) | Automatic Route / Approval Route |
| 3 | Details of the foreign investor / collaborator* | |
| | Name Address Country Constitution / Nature of the investing Entity [Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF) ²¹ 9. Partnership / Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)] Date of incorporation | |

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

²¹ SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

| | | | | | | | | |
|-----|--|--|----------------------|---|-------------------|----------------|------------------------------|--------------------------|
| 4 | Particulars of Shares / Convertible Debentures Issued | | | | | | | |
| (a) | Nature and date of issue | | | | | | | |
| | | Nature of issue | Date of issue | Number of shares/ convertible debentures | | | | |
| | 01 | IPO / FPO | | | | | | |
| | 02 | Preferential allotment / private placement | | | | | | |
| | 03 | Rights | | | | | | |
| | 04 | Bonus | | | | | | |
| | 05 | Conversion of ECB | | | | | | |
| | 06 | Conversion of royalty (including lump sum payments) | | | | | | |
| | 07 | Conversion against import of capital goods by units in SEZ | | | | | | |
| | 08 | ESOPs | | | | | | |
| | 09 | Share Swap | | | | | | |
| | 10 | Others (please specify) | | | | | | |
| | | Total | | | | | | |
| (b) | Type of security issued | | | | | | | |
| | No. | Nature of security | Number | Maturity | Face value | Premium | Issue Price per share | Amount of inflow* |
| | 01 | Equity | | | | | | |
| | 02 | Compulsorily Convertible Debentures | | | | | | |
| | 03 | Compulsorily Convertible Preference shares | | | | | | |
| | 04 | Others (please specify) | | | | | | |
| | | Total | | | | | | |

- i) In case the issue price is greater than the face value please give break up of the premium received.
ii) * In case the issue is against conversion of ECB or royalty or against import of capital goods by units in SEZ, a Chartered Accountant's Certificate certifying the amount outstanding on the date of conversion

| | | |
|-----|----------------------------|---------------|
| (c) | Break up of premium | Amount |
| | Control Premium | |
| | Non competition fee | |
| | Others [@] | |
| | Total | |

[@] please specify the nature

| | | |
|-----|--|--|
| (d) | <p>Total inflow (in Rupees) on account of issue of shares / convertible debentures to non-residents (including premium, if any) vide</p> <p>(i) Remittance through AD: (ii) Debit to NRE/FCNR A/c with Bank _____ (iii) Others (please specify)</p> <p>Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.</p> | |
| (e) | Disclosure of fair value of shares issued** | |
| | We are a listed company and the market value of a share as on date of the issue is* | |
| | We are an un-listed company and the fair value of a share is* | |

** before issue of shares

*(Please indicate as applicable)

| 5. Post issue pattern of shareholding | | | | | | | |
|---------------------------------------|--------------------------------------|---------------|-------------------------|---|--|-------------------------|---|
| | | Equity | | | Compulsorily convertible Preference Shares/ Debentures | | |
| Investor category | | No. of shares | Amount (Face Value) Rs. | % | No. of shares | Amount (Face Value) Rs. | % |
| a) | Non-Resident | | | | | | |
| | 01 Individuals | | | | | | |
| | 02 Companies | | | | | | |
| | 03 FIs | | | | | | |
| | 04 FVCIs | | | | | | |
| | 05 Foreign Trusts | | | | | | |
| | 06 Private Equity Funds | | | | | | |
| | 07 Pension/ Provident Funds | | | | | | |
| | 08 Sovereign Wealth Funds | | | | | | |
| | 09 Partnership/ Proprietorship Firms | | | | | | |
| | 10 Financial Institutions | | | | | | |
| | 11 NRIs/PIO | | | | | | |
| | 12 Others (please specify) | | | | | | |
| | Sub Total | | | | | | |
| b) | Resident | | | | | | |
| Total | | | | | | | |

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY: *(Delete whichever is not applicable and authenticate)*

We hereby declare that:

1. We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3rd May 2000 as amended from time to time.
2. The investment is within the sectoral cap/statutory ceiling permissible under the Automatic Route of RBI and we fulfill all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable) .

a) Foreign entity/entities—(other than individuals), to whom we have issued shares have existing joint venture or technology transfer or trade mark agreement in India in the same field and Conditions stipulated in Press Note 1 of 2005 Series dated January 12, 2005 have been complied with.

OR

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

b) We are not an SSI unit.

OR

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

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

OR

Shares issued are bonus shares.

OR

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

OR

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

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

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

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

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

| | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| R | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

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|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| R | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

(Signature of the Applicant)* : _____

(Name in Block Letters) : _____

(Designation of the signatory) : _____

Place:

Date:

(* To be signed by Managing Director/Director/Secretary of the Company)

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY²² OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT:

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

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

1. All the requirements of the Companies Act, 1956 have been complied with.
2. Terms and conditions of the Government approval, if any, have been complied with.
3. The company is eligible to issue shares / convertible debentures under these Regulations.

²² If the company doesn't have a full time Company Secretary, a certificate from a practising Company Secretary may be submitted.

| | | | | | |
|--|---|--|---|--|---|
| 5. | Whether listed company or unlisted company | Listed / Unlisted | | | |
| 5.1 | If listed, i) Market value per share as at end-March ii) Net Asset Value per share as on date of latest Audited Balance Sheet | | | | |
| 5.2 | If unlisted, Net Asset Value per share as on date of latest Audited Balance Sheet | | | | |
| 6. Foreign Direct Investment (FDI) | | | | | |
| | | Amount in Lakhs of Rupees | | | |
| | | Foreign Liabilities In India * | | Foreign Assets Outside India & | |
| | | Outstanding at end-March of Previous Year | Outstanding at end-March of Current Year | Outstanding at end-March of Previous Year | Outstanding at end-March of Current Year |
| 6.0 Equity Capital | | | | | |
| 6.1 Other Capital ^Ω | | | | | |
| 6.2 Disinvestments during the year | | | | | |
| 6.3 Retained earnings during the year ⁺ | | | | | |

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

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

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

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

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

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

| 10. Shareholding pattern as at end-March | | | | | | | |
|--|---|---|-------------------------|---|--|-------------------------|---|
| Investor category / Nature of investing entity | | Equity | | | Compulsorily convertible Preference Shares/ Debentures | | |
| | | No. of shares | Amount (Face Value) Rs. | % | No. of shares | Amount (Face Value) Rs. | % |
| a) | Non-Resident | | | | | | |
| | 01 | Individuals | | | | | |
| | 02 | Companies | | | | | |
| | 03 | FIs | | | | | |
| | 04 | FVCIs | | | | | |
| | 05 | Foreign Trusts | | | | | |
| | 06 | Private Equity Funds | | | | | |
| | 07 | Pension/ Provident Funds | | | | | |
| | 08 | Sovereign Wealth Fund (SWF)²³ | | | | | |
| | 09 | Partnership / Proprietorship Firms | | | | | |
| | 10 | Financial Institutions | | | | | |
| | 11 | NRIs/PIO | | | | | |
| | 12 | Others (please specify) | | | | | |
| | | Sub Total | | | | | |
| b) | Resident | | | | | | |
| | Total | | | | | | |
| | | | | | | | |
| 11. | Persons employed during the financial year ending March 31 [®] | | | | | | |
| | Directly | | | | | | |
| | Indirectly | | | | | | |
| | Total | | | | | | |

Signature of the authorised Official : _____

Name (in block letters) : _____

Designation : _____

Place:

Date:

²³ SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

[®] Please indicate the number of persons recruited by your company during the financial year for which the return is being submitted. Under "Directly", indicate the number of persons on the roll of your company, whereas under "Indirectly", indicate the number of persons otherwise engaged by your company during the year.

| Form FC-TRS | | | | | |
|---|---|------------|---------|-----|---------------|
| Declaration regarding transfer of shares of by way of sale from resident to non resident/ non-resident to resident | | | | | |
| (to be submitted to the AD branch in quadruplicate) | | | | | |
| <p>The following documents are enclosed (See Para 5 of Annex)</p> <p><i>For sale of shares by a person resident in India</i></p> <p>(i) Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document</p> <p>(ii) The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India</p> <p>(iii) Certificate indicating fair value of shares from a Chartered Accountant.</p> <p>(iv) Copy of Broker's note if sale is made on Stock Exchange.</p> <p>(v) Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.</p> <p>(vi) Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.</p> <p><i>Additional documents in respect of sale of shares by a person resident outside India</i></p> <p>(vii) If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis.</p> <p>(viii) No Objection/Tax Clearance Certificate from Income Tax Authority/Chartered Account.</p> | | | | | |
| 1 | Name of the company | | | | |
| | <i>Address (including e-mail ,telephone Number Fax no)</i> | | | | |
| | <i>Activity</i> | | | | |
| | <i>NIC Code No.</i> | | | | |
| | | | | | |
| 2 | Whether FDI is allowed under Automatic route | | | | |
| | Sectoral Cap under FDI Policy | | | | |
| | | | | | |
| 3 | Nature of transaction | | | | |
| | Transfer from resident to non resident | | | | |
| | Transfer from non resident to resident | | | | |
| | | | | | |
| 4 | Name of the buyer | | | | |
| | | | | | |
| | Category (please tick appropriate category) | Individual | Company | FII | Others |
| | In case of Company/FII etc please indicate the constitution of the company i.e. Limited company, registered partnership etc | | | | |
| | Date and Place of Incorporation | | | | |
| | <i>Address of the buyer (including e-mail ,telephone Number Fax no)</i> | | | | |
| | | | | | |
| 5 | Name of the seller | | | | |
| | | | | | |
| | Category | Individual | Company | FII | Others(please |

| | | | | | |
|---|---|---|-------------------|--|--------------------------------|
| | (Please tick appropriate category) | | | | specify) |
| | In case of Company/FII etc please indicate the constitution of the company i.e. Limited company, registered partnership etc | | | | |
| | Date and Place of Incorporation | | | | |
| | Address of the seller (including e-mail ,telephone Number Fax no) | | | | |
| | | | | | |
| 6 | Particulars of earlier Reserve Bank/FIPB approvals | | | | |
| | | | | | |
| 7 | Details regarding shares/convertible debentures to be transferred | | | | |
| | <i>Date of the transaction</i> | <i>Number of shares</i> | <i>face value</i> | <i>Negotiated Price for the transfer**</i> | <i>Amount of consideration</i> |
| | | | | | |
| 8 | Foreign Investments in the company | | | | |
| | | <i>No of shares</i> | <i>Percentage</i> | | |
| | Before the transfer | | | | |
| | | | | | |
| | After the transfer | | | | |
| | | | | | |
| 9 | Where the shares are listed on Stock Exchange | | | | |
| | <i>If so Name of the Stock exchange</i> | | | | |
| | <i>Price Quoted on the Stock exchange</i> | | | | |
| | Where the shares are Unlisted | | | | |
| | | | | | |
| | <i>Price as per Valuation guidelines*</i> | | | | |
| | | | | | |
| | <i>Price as per Chartered Accountants Valuation report</i> | | | | |
| * / ** | <i>CA Certificate to be attached</i> | | | | |
| Declaration by the transferor/transferee | | | | | |
| I/ We hereby declare that : | | | | | |
| (i) | (i) | The particulars given above are true and correct to the best of my/our knowledge and belief | | | |
| (ii) | (ii) | I/ We was/were holding the shares as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis | | | |
| (iii) | (iii) | I/ We are eligible to acquire the shares of the company in terms of the FDI Policy. It is not a transfer relating to shares of a company engaged in financial services sector or a sector where general permission is not available | | | |
| (iv) | (iv) | The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to | | | |
| | | | | Signature of the Declarant or his duly authorised agent | |
| Date: | | | | | |

Note

In respect of the transfer of shares from resident to non resident the declaration has to be signed by the non resident buyer

and

In respect of the transfer of shares from non resident to resident the declaration has to be signed by the non resident seller

Certificate by the AD Branch

It is certified that the application is complete in all respects

The receipt /payment for the transaction is in accordance FEMA Regulations/ Reserve Bank guidelines

Signature

Name and Designation of the Officer

Date:

Name of the AD Branch

AD Branch Code

Annex - 10

(PART I, Section I, para 29)

| Return to be filed by an Indian Company who has arranged issue of GDR/ADR | | | |
|---|---|---|--|
| [Annex 'C' referred in paragraph 4(2) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000] | | | |
| Instructions : The form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai. | | | |
| 1. | Name of the Company | | |
| 2. | Address of Registered Office | | |
| 3. | Address for Correspondence | | |
| 4. | Existing Business (please give the NIC Code of the activity in which the company is predominantly engaged) | | |
| 5. | Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof | | |
| 6. | Name and address of the Depository abroad | | |
| 7. | Name and address of the Lead/ Manager Investment/Merchant Banker | | |
| 8. | Name and address of the Sub-Managers to the issue | | |
| 9. | Name and address of the Indian Custodians | | |
| 10. | Details of FIPB approval (please quote the relevant NIC Code if the GDRs are being issued under the Automatic Route) | | |
| 11. | Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details | | |
| 12. | Details of the Equity Capital | | |
| | (a) | Authorised Capital | |
| | (b) | Issued and Paid-up Capital | |
| | (i) | Held by persons Resident in India | |
| | (ii) | Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished) | |
| | (iii) | Held by NRIs/PIOs/OCBs | |
| | (iv) | Held by FIIs | |
| | | Total Equity held by non-residents | |
| | (c) | Percentage of equity held by non-residents to total paid-up capital | |
| 13. | Whether issue was on private placement basis. If yes, please give details of the investors and ADRs/GDRs issued to each | | |

| | | |
|---|---|-------------------------------------|
| | of them | |
| 14. | Number of GDRs/ADRs issued | |
| 15. | Ratio of GDRs/ADRs to underlying shares | |
| 16. | <u>Issue Related Expenses</u> | |
| | (a) Fee paid/payable to Merchant Bankers/Lead Manager | |
| | (i) Amount (in US\$, etc.) | |
| | (ii) Amount as percentage to the total issue | |
| | (b) Other expenses | |
| 17. | Whether funds are kept abroad. If yes, name and address of the bank | |
| 18. | Details of the listing arrangement | |
| | Name of Stock Exchange | |
| | Date of commencement of trading | |
| 19. | The date on which ADRs/GDRs issue was launched | |
| 20. | Amount raised (in US \$) | |
| 21. | Amount repatriated (in US \$) | |
| Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with. | | |
| Chartered Accountant | | Authorised Signatory of the Company |

Annex-11

(PART I, Section I, para 29)

| Quarterly Return | |
|--|--|
| [Annex 'D' referred in paragraph 4(3) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000] | |
| (to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai) | |
| 1. | Name of the Company |
| 2. | Address |
| 3. | GDR/ADR issue launched on |
| 4. | Total No. of GDRs/ADRs issued |
| 5. | Total amount raised |
| 6. | Total interest earned till end of quarter |
| 7. | Issue expenses and commission etc. |
| 8. | Amount repatriated |
| 9. | Balance kept abroad - Details |
| | (i) Banks Deposits |
| | (ii) Treasury Bills |
| | (iii) Others (please specify) |
| 10. | No. of GDRs still outstanding |
| 11. | Company's share price at the end of the quarter |
| 12. | GDR price quoted on overseas stock exchange as at the end of the quarter |
| Certified that the funds raised through ADRs/GDRs have not been invested in stock market or real estate. | |
| Chartered Accountant | Authorised Signatory of the Company |

IPI
(Part II, para 3)

Declaration of immovable property acquired in India
by a person resident outside India

Instructions:

The declaration should be completed in duplicate and submitted directly to the Chief General Manager, Exchange Control Department, (Foreign Investment Division – III), Reserve Bank of India, Central Office, Mumbai-400 001 within 90 days from the date of acquisition of the immovable property.

Documentation:

Certified copies of letter of approval from Reserve Bank obtained under section 6(6) of FEMA, 1999 (42 of 1999).

| | | | | |
|---|-----|---|-----|--|
| 1 | | Full name and address of the acquirer who has acquired the immovable property | | |
| 2 | (a) | Description of immovable property | (a) | |
| | (b) | Details of its exact location stating the name of the state, town and municipal/survey number, etc. | (b) | |
| 3 | (a) | Purpose for which the immovable property has been acquired | (a) | |
| | (b) | Number and date of Reserve Bank's permission, if any, | (b) | |
| 4 | | Date of acquisition of the immovable property | | |
| 5 | (a) | How the immovable property was acquired i.e, whether by way of purchase or lease | (a) | |
| | (b) | Name, citizenship and address of the seller/lessor | (b) | |

| | | | | |
|--|-----|--|-----|--|
| | (c) | Amount of purchase price and sources of funds. | (c) | |
|--|-----|--|-----|--|

I/We hereby declare that –

(a) the particulars given above are true and correct to the best of my/our knowledge and belief ;

(b) no portion of the said property has been leased/rented to, or is otherwise being allowed to be used by, any other party .

Encls:

.....

(Signature of Authorised official)

Stamp

Place.....

Name

Date.....

Designation:.....

FNC 1
(Part III, para 1)

A. General Instructions to Applicants :

The application form only should be completed and submitted to the Chief General Manager, Exchange Control Department (Foreign Investment Division), Reserve Bank of India, Central Office, Mumbai-400001.

B. Documentation :

- i) English version of the certificate of incorporation/registration or Memorandum & Articles of Association attested by Indian Embassy/Notary Public in the country of registration.
- ii) Latest Audited Balance Sheet of the applicant company/firm.
- iii) In case of Project Office documentary evidence that the Project is funded by bilateral or multilateral International Financing Agencies OR the project has been cleared by the concerned regulatory authority OR the Indian company has been granted term loan for the concerned Project by a Financial Institution or a Bank in India.

1. i) Full name and address of the applicant company/firm [State whether the applicant is a proprietary concern or partnership firm or limited company or public sector undertaking or any other organisation (Please specify).

ii) Date and Place of incorporation / registration.

2. Details of capital

- i) Paid-up capital _____ divided into _____ shares of _____ each
- ii) Free Reserves as per last audited Balance Sheet

3. Brief description of the activities of the applicant.

4. FOR LIAISON / BRANCH OFFICE

- i) Value of goods imported from and / or exported to India by the applicant during each of the last three years:
 - a) Imports from India
 - b) Exports to India
- ii) Particulars of existing arrangements if any, for representing the company in India.
- iii) Particulars of the proposed Branch/ Liaison Office
 - a) Details of the activities/services proposed to be undertaken/ rendered by the office.
 - b) Place where the office will be located.

5. FOR PROJECT OFFICE

If the office is to be opened on a temporary basis in connection with any specific project or contract to be executed in India by the applicant :

- i) Brief description of the project/ contract, including terms of payment / duration, etc.
- ii) Place where the office will be located
- iii) Whether the project office is funded entirely by inward remittances or by any other source specified at B (iii)

6. Any other information which the applicant company wishes to furnish in support of this application.

We hereby declare that :

- i) The particulars given above are true and correct to the best of our knowledge and belief;

- ii) Our activities in India would be confined to the fields indicated in column 4(iii)(a) or 5(i)above;
- iii) If we shift the office to another place, we shall intimate the Reserve Bank of India; and
- iv) We will abide by the terms and conditions that may be stipulated by Reserve Bank of India if approval is given.

Place :

(Signature of Authorised Official
of the Applicant Company)

Name:

Date:

Designation:

The Foreign Exchange Management Act, 1999

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Be it enacted by Parliament in the Fiftieth Year of the Republic of the India as follows:

Chapter - 1

Preliminary

1. Short title, extent, application and commencement

- (1) This Act may be called the Foreign Exchange Management Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- (4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:
- Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions - In this Act, unless the context otherwise requires, -

- (a) "Adjudicating Authority" means an officer authorised under sub-section (1) of Section 16;
- (b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;
- (c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;
- (d) "Bench" means a Bench of the Appellate Tribunal;
- (e) "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;
- (f) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (g) "chartered accountant" shall have the meaning assigned to it in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949);
- (h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;
- (i) "currency notes" means and includes cash in the form of coins and bank notes
- (j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes, -
- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- (ii) payments due as interest on loans and as net income from investments,
- (iii) remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) expenses in connection with foreign travel, education and medical care of parents, spouse

| | | | |
|--------------------------|--------------------------|---|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | and children; |
| <input type="checkbox"/> | (k) | "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 36; | |
| <input type="checkbox"/> | (l) | "export", with its grammatical variations and cognate expressions, means | |
| <input type="checkbox"/> | <input type="checkbox"/> | (i) | the taking out of India to place outside India any goods, |
| <input type="checkbox"/> | <input type="checkbox"/> | (ii) | provision of services from India to any person outside India; |
| <input type="checkbox"/> | (m) | "foreign currency" means any currency other than Indian currency; | |
| <input type="checkbox"/> | (n) | "foreign exchange" means foreign currency and includes, - | |
| <input type="checkbox"/> | <input type="checkbox"/> | (i) | deposits, credits and balances payable in any foreign currency, |
| <input type="checkbox"/> | <input type="checkbox"/> | (ii) | drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, |
| <input type="checkbox"/> | <input type="checkbox"/> | (iii) | drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; |
| <input type="checkbox"/> | (o) | "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency; | |
| <input type="checkbox"/> | (p) | "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services; | |
| <input type="checkbox"/> | (q) | "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934); | |
| <input type="checkbox"/> | (r) | "legal practitioner" shall have the meaning assigned to it in clause (i) of sub section (1) of section 2 of the Advocates Act, 1961 (25 of 1961); | |
| <input type="checkbox"/> | (s) | "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof, | |
| <input type="checkbox"/> | (t) | "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly; | |
| <input type="checkbox"/> | (u) | "person" includes - | |
| <input type="checkbox"/> | <input type="checkbox"/> | (i) | an individual, |
| <input type="checkbox"/> | <input type="checkbox"/> | (ii) | a Hindu undivided family, |
| <input type="checkbox"/> | <input type="checkbox"/> | (iii) | a company, |
| <input type="checkbox"/> | <input type="checkbox"/> | (iv) | a firm, |
| <input type="checkbox"/> | <input type="checkbox"/> | (v) | an association of persons or a body of individuals, whether incorporated or not. |
| <input type="checkbox"/> | <input type="checkbox"/> | (vi) | every artificial juridical person, not falling within any of the preceding sub-clauses, and |
| <input type="checkbox"/> | <input type="checkbox"/> | (vii) | any agency, office or branch owned or controlled by such person; |
| <input type="checkbox"/> | (v) | "person resident in India" means - | |
| <input type="checkbox"/> | <input type="checkbox"/> | (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 - |
| <input type="checkbox"/> | <input type="checkbox"/> | (A) | a person who has gone out of India or who stays outside India, in either case - |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) for or on taking up employment outside India, or |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (b) for carrying on outside India a business or vocation outside India, or |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; |
| <input type="checkbox"/> | <input type="checkbox"/> | (B) | a person who has come to or stays in India, in either case, otherwise than - |

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| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) | for or on taking up employment in India, or |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (b) | for carrying on in India a business or vocation in India, or |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (c) | for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (ii) | any person or body corporate registered or incorporated in India, |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (iii) | an office, branch or agency in India owned or controlled by a person resident outside India, |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (iv) | an office, branch or agency outside India owned or controlled by a person resident in India; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (w) | "person resident outside India" means a person who is not resident in India; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (x) | "prescribed" means prescribed by rules made under this Act; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (y) | "repatriate to India" means bringing into India the realised foreign exchange and - |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (i) | the selling of such foreign exchange to an authorised person in India in exchange for rupees, or |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (ii) | the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (z) | "Reserve Bank" means the Reserve Bank of India constituted under sub section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (za) | "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (8 of 1944) savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (zb) | "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (zc) | "Special Director (Appeals)" means an officer appointed under section 18; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (zd) | "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly; |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (ze) | "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. |

Chapter - 2

3. Regulation and Management of Foreign Exchange

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;

Explanation : For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation : For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

4. Holding of foreign exchange, etc. - Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

5. Current account transactions - Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

6. Capital account transactions -

(1) Subject to the provisions of subsection (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify -

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up, to which foreign exchange shall be admissible for such transactions:

Provided that the Reserve Bank shall not impose any restrictions on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following -

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

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| | | (i) | acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India; |
| | | (j) | giving of a guarantee or surety in respect of any debt, obligation or other liability incurred - |
| | | (i) | by a person resident in India and owed to a person resident outside India; or |
| | | (ii) | by a person outside India. |
| | (4) | | A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. |
| | (5) | | A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India. |
| | (6) | | Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business. |
| 7. | Export of goods and services - | | |
| | (1) | | Every exporter of goods shall - |
| | | (a) | furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods in a market outside India; |
| | | (b) | furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter. |
| | (2) | | The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit. |
| | (3) | | Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services. |
| 8. | Realisation and repatriation of foreign exchange - Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank. | | |
| 9. | Exemption from realisation and repatriation in certain cases - The provisions of sections 4 and 8 shall not apply to the following, namely - | | |
| | (a) | | possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify; |
| | (b) | | foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify; |
| | (c) | | foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank; |
| | (d) | | foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom; |
| | (e) | | foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and |
| | (f) | | such other receipts in foreign exchange as the Reserve Bank may specify. |

Authorised Person**10. Authorised person -**

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| | (1) | The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit. |
| | (2) | An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein. |
| | (3) | An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that - |
| | | (a) it is in public interest so to do; or |
| | | (b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder: |
| | | Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter. |
| | (4) | An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special-directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section. |
| | (5) | An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank. |
| | (6) | Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section. |

11. Reserve Bank's powers to issue directions to authorised person -

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| | (1) | The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security. |
| | (2) | The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit. |
| | (3) | Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues. |

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| 12. | Power of Reserve Bank to inspect authorised person - | |
| | (1) | The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of - |
| | (a) | verifying the correctness of any statement, information or particulars furnished to the Reserve Bank; |
| | (b) | obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so; |
| | (c) | securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder. |
| | (2) | It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct. |

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| Chapter - 4 | | |
| Contravention and Penalties | | |
| 13. | Penalties - | |
| | (1) | If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues. |
| | (2) | Any Adjudicating Authority adjudging any contravention under sub-section (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 Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf. |
| | | Explanation :- For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include - |
| | (a) | deposits in a bank, where the said property is converted into such deposits; |
| | (b) | Indian currency, where the said property is converted into that currency; and |
| | (c) | any other property which has resulted out of the conversion of that property. |
| 14. | Enforcement of the orders of Adjudicating Authority - | |
| | (1) | Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section. |
| | (2) | No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied - |
| | (a) | that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue |

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| | | | of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or |
| | | (b) | that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same. |
| | (3) | | Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority. |
| | (4) | | Where appearance is not made pursuant to a notice issued and served under subsection (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter. |
| | (5) | | A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found. |
| | (6) | | Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey): |
| | | | Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him. |
| | | | Explanation : For the purposes of this sub-section, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter. |
| | (7) | | When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison. |
| | (8) | | Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required. |
| | (9) | | Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest: |
| | | | Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied. |
| | (10) | | When the Adjudicating Authority does not make an order of detention under subsection (9), he shall, if the defaulter is under arrest, direct his release. |
| | (11) | | Every person detained in the civil prison in execution of the certificate may be so detained, - |
| | | (a) | where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and |
| | | (b) | in any other case, up to six months: |
| | | | Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison. |
| | (12) | | A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison. |
| | (13) | | A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974). |

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| 15. | Power to compound contravention - |
| | (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed. |
| | (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded. |

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| Chapter - 5 | |
| Adjudication and Appeal | |
| 16. Appointment of Adjudicating Authority - | |
| | (1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (2) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty: |
| | Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit. |
| | (2) The Central Government shall, while appointing the Adjudicating Authorities under subsection (1), also specify in the order published in the Official Gazette, their respective jurisdictions. |
| | (3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government. |
| | (4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority. |
| | (5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and - |
| | (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860); |
| | (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). |
| | (6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint: |
| | Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period. |

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| 17. | Appeal to Special Director (Appeals) - |
| | (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction. |
| | (2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals). |
| | (3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed. |
| | Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period. |
| | (4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against. |
| | (5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority. |
| | (6) The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and - |
| | (a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860); |
| | (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). |
| 18. | Establishment of Appellate Tribunal - The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act. |
| 19. | Appeal to Appellate Tribunal - |
| | (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal. |
| | Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal; deposit the amount of such penalty with such authority as may be notified by the Central Government. |
| | Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty. |
| | (2) Every appeal under subsection (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed: |
| | Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. |
| | (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. |
| | (4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be. |
| | (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal: |

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| <input type="checkbox"/> | <input type="checkbox"/> | Provided that where any appeal could not be disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period. |
| <input type="checkbox"/> | (6) | The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit. |
| 20. Composition of Appellate Tribunal - | | |
| <input type="checkbox"/> | (1) | The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit. |
| <input type="checkbox"/> | (2) | Subject to the provisions of this Act, - |
| <input type="checkbox"/> | (a) | the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof; |
| <input type="checkbox"/> | (b) | a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit; |
| <input type="checkbox"/> | (c) | the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify; |
| <input type="checkbox"/> | (d) | the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction. |
| <input type="checkbox"/> | (3) | Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench. |
| <input type="checkbox"/> | (4) | If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit. |
| 21. Qualifications for appointment of Chairperson, Member and Special Director (Appeals) - | | |
| <input type="checkbox"/> | (1) | A person shall not be qualified for appointment as the Chairperson or a Member unless he - |
| <input type="checkbox"/> | (a) | in the case of Chairperson, is or has been, or is qualified to be, a Judge of a High Court; and |
| <input type="checkbox"/> | (b) | in the case of a Member, is or has been, or is qualified to be, a District Judge. |
| <input type="checkbox"/> | (2) | A person shall not be qualified for appointment as a Special Director (Appeals) unless he - |
| <input type="checkbox"/> | (a) | has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or |
| <input type="checkbox"/> | (b) | has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India. |
| <input type="checkbox"/> | 22. Term of office - The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office: | |
| <input type="checkbox"/> | Provided that no Chairperson or other Member shall hold office as such after he has attained, - | |
| <input type="checkbox"/> | (a) | in the case of the Chairperson, the age of sixty-five years; |
| <input type="checkbox"/> | (b) | in the case of any other Member, the age of sixty-two years. |
| <input type="checkbox"/> | 23. Terms and conditions of service - The salary and allowances payable to and the other terms and conditions of service of the Chairperson, other Members and the Special Director (Appeals) shall be such as may be prescribed | |
| <input type="checkbox"/> | Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment. | |
| <input type="checkbox"/> | 24. Vacancies - If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled. | |

25. Resignation and removal -

(1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

26. Member to act as Chairperson in certain circumstances -

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

27. Staff of Appellate Tribunal and Special Director (Appeals) -

(1) The Central Government shall provide the Appellate Tribunal and the Special Director (Appeals) with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Chairperson and the Special Director (Appeals), as the case may be.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall be such as may be, prescribed.

28. Procedure and powers of Appellate Tribunal and Special Director (Appeals) -

(1) The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal and the Special Director (Appeals) shall have powers to regulate its own procedure.

(2) The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908); while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

| | | |
|-----|-----|---|
| | (3) | An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court. |
| | (4) | Notwithstanding anything contained in sub-section (3), the Appellate Tribunal or the Special Director (Appeals) may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court. |
| | (5) | All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (45 of 1860) (2 of 1974). |
| 29. | | Distribution of business amongst Benches - Where Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench. |
| 30. | | Power of Chairperson to transfer cases - On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench. |
| 31. | | Decision to be by majority - If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. |
| 32. | | Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers - |
| | (1) | A person preferring an appeal to the Appellate Tribunal or the Special Director (Appeals) under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the Appellate Tribunal or the Special Director (Appeals), as the case may be. |
| | (2) | The Central Government may authorise one or more legal practitioners or chartered accountants or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal or the Special Director (Appeals), as the case may be. |
| 33. | | Members, etc., to be public servants - The Chairperson members and other officers and employees of the Appellate Tribunal, the Special Director (Appeals) and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860). |
| 34. | | Civil court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. |
| 35. | | Appeal to High Court - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order: |
| | | Provided that the High Court may, if it is satisfied that the appellant was prevented by Sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. |
| | | Explanation : In this section "High Court" means - |
| | (a) | the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and |
| | (b) | where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain. |

Chapter - 6

Directorate of Enforcement

36. Directorate of Enforcement -

- (1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.
- (2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.
- (3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

37. Power of search, seizure, etc. -

- (1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.
- (2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.
- (3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act (43 of 1961).

38. Empowering other officers -

- (1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.
- (2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961, subject to such conditions and limitations as the Central Government may impose (43 of 1961).

Chapter - 7

Miscellaneous

39. Presumption as to documents in certain cases - Where any document -

- (i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or
- (ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,
- and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall -
- (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

40. Suspension of operation of this Act

- (1) If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act.
- (2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.
- (3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

41. Power of Central Government to give directions - For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

42. Contravention by companies

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, 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.
- Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section -

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

43. Death or insolvency in certain cases - Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be:

Provided that a legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.

44. Bar of legal proceedings - No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

45. Removal of difficulties -

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

46. Power to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for, -

(a) imposition of reasonable restrictions on current account transactions under section 5;

(b) the manner in which the contravention may be compounded under subsection (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authority under subsection (1) of section 16;

(d) the form of appeal and fee for filing such appeal under sections 17 and 19;

(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;

(g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of section 28;

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be, prescribed.

47. Power to make regulations

- (1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.
- (2) Without prejudice to the generality of the foregoing power, such regulations may provide for, -
 - (a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;
 - (b) the manner and the form in which the declaration is to be furnished under clause (a) sub-section (1) of section 7;
 - (c) the period within which and the manner of repatriation of foreign exchange under section 8;
 - (d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;
 - (e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;
 - (f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;
 - (g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;
 - (h) any other matter which is required to be, or may be, specified.

48. Rules and regulations to be laid before Parliament - Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

49. Repeal and saving -

- (1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.
- (2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.
- (3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.
- (4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.
- (5) Notwithstanding such repeal, -
 - (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
 - (b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

| | | | |
|--------------------------|--------------------------|-----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (c) | every appeal from any decision or order of the Appellate Board under subsection (3) or subsection (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement: |
| <input type="checkbox"/> | <input type="checkbox"/> | | Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period. |
| <input type="checkbox"/> | <input type="checkbox"/> | (6) | Save as otherwise provided in sub-section (3), the mention of particular matters in sub-section (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal. |

APPENDIX

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

Notifications

| Sl.No. | Notification | Date |
|--------|-----------------------|--------------------|
| 1. | No. FEMA 32/2000-RB | December 26, 2000 |
| 2. | No. FEMA 35/2001-RB | February 16, 2001 |
| 3. | No. FEMA 41/2001-RB | March 2, 2001 |
| 4. | No. FEMA 45/2001-RB | September 20, 2001 |
| 5. | No. FEMA 46/2001-RB | November 29, 2001 |
| 6. | No. FEMA 50/2002-RB | February 20, 2002 |
| 7. | No. FEMA 55/2002-RB | March 7, 2002 |
| 8. | No. FEMA 62/2002-RB | May 13, 2002 |
| 9. | No. FEMA 64/2002-RB | June 29, 2002 |
| 10. | No. FEMA 65/2002-RB | June 29, 2002 |
| 11. | No. FEMA 76/2002-RB | November 12, 2002 |
| 12. | No. FEMA 85/2003-RB | January 17, 2003 |
| 13. | No. FEMA 93/2003-RB | June 9, 2003 |
| 14. | No. FEMA 94/2003-RB | June 18, 2003 |
| 15. | No. FEMA 100/2003-RB | October 3, 2003 |
| 16. | No. FEMA 101/2003-RB | October 3, 2003 |
| 17. | No. FEMA 106/2003-RB | October 27, 2003 |
| 18. | No. FEMA 108/2003-RB | January 1, 2004 |
| 19. | No. FEMA 111/2004-RB | March 6, 2004 |
| 20. | No.FEMA.118/2004-RB | June 29, 2004 |
| 21. | No.FEMA.122/2004-RB | August 30, 2004 |
| 22. | No.FEMA.125./2004-RB | November 27, 2004 |
| 23. | No.FEMA.130/2005-RB | March 17, 2005 |
| 24. | No.FEMA.131/2005-RB | March 17, 2005 |
| 25. | No.FEMA.138/2005-RB | July 22, 2005 |
| 26. | No. FEMA.136 /2005-RB | July 19, 2005 |
| 27. | No. FEMA.137/2005- RB | July 22, 2005 |
| 28. | No.FEMA.138/2005-RB | July 22, 2005 |
| 29. | No. FEMA.149/2006-RB | June 9, 2006 |
| 30. | No. FEMA.153/2006-RB | May 31, 2007 |
| 31. | No. FEMA.167/2007-RB | October 23, 2007 |
| 32. | No. FEMA.170/2007-RB | November 13, 2007 |

| Circulars | | |
|------------------|---------------------------------|--------------------|
| Sl.No. | Circulars | Date |
| 1. | A.P.DIR(Series) Circular No.14 | September 26, 2000 |
| 2. | A.P.DIR(Series) Circular No.24 | January 6, 2001 |
| 3. | A.P.DIR(Series) Circular No.26 | February 22, 2001 |
| 4. | A.P.DIR(Series) Circular No.32 | April 28, 2001 |
| 5. | A.P.DIR(Series) Circular No.13 | November 29, 2001 |
| 6. | A.P.DIR(Series) Circular No.21 | February 13, 2002 |
| 7. | A.P.DIR(Series) Circular No.29 | March 11, 2002 |
| 8. | A.P.DIR(Series) Circular No.1 | July 2, 2002 |
| 9. | A.P.DIR(Series) Circular No.5 | July 15, 2002 |
| 10. | A.P.DIR(Series) Circular No.19 | September 12, 2002 |
| 11. | A.P.DIR(Series) Circular No.35 | November 1, 2002 |
| 12. | A.P.DIR(Series) Circular No.45 | November 12, 2002 |
| 13. | A.P.DIR(Series) Circular No.46 | November 12, 2002 |
| 14. | A.P.DIR(Series) Circular No.52 | November 23, 2002 |
| 15. | A.P.DIR(Series) Circular No.56 | November 26, 2002 |
| 16. | A.P.DIR(Series) Circular No.67 | January 13, 2003 |
| 17. | A.P.DIR(Series) Circular No.68 | January 13, 2003 |
| 18. | A.P.DIR(Series) Circular No.69 | January 13, 2003 |
| 19. | A.P.DIR(Series) Circular No.75 | February 3, 2003 |
| 20. | A.P.DIR(Series) Circular No.88 | March 27, 2003 |
| 21. | A.P.DIR(Series) Circular No.101 | May 5, 2003 |
| 22. | A.P.DIR(Series) Circular No.10 | August 20, 2003 |
| 23. | A.P.DIR(Series) Circular No.13 | September 1, 2003 |
| 24. | A.P.DIR(Series) Circular No.14 | September 16, 2003 |
| 25. | A.P.DIR(Series) Circular No.19 | September 23, 2003 |
| 26. | A.P.DIR(Series) Circular No.28 | October 17, 2003 |
| 27. | A.P.DIR(Series) Circular No.35 | November 14, 2003 |
| 28. | A.P.DIR(Series) Circular No.38 | December 3, 2003 |
| 29. | A.P.DIR(Series) Circular No.39 | December 3, 2003 |
| 30. | A.P.DIR(Series) Circular No.43 | December 8, 2003 |
| 31. | A.P.DIR(Series) Circular No.44 | December 8, 2003 |
| 32. | AP (DIR Series) Circular No.53 | December 17, 2003 |
| 33. | A.P.DIR(Series) Circular No.54 | December 20, 2003 |
| 34. | A.P.DIR(Series) Circular No.63 | February 3, 2004 |
| 35. | A.P.DIR(Series) Circular No.67 | February 6, 2004 |
| 36. | A.P.DIR(Series) Circular No.89 | April 24, 2004 |
| 37. | A.P.DIR(Series) Circular No.11 | September 13, 2004 |
| 38. | A.P.DIR(Series) Circular No.13 | October 1, 2004 |
| 39. | A.P.DIR(Series) Circular No.15 | October 1, 2004 |
| 40. | A.P.DIR(Series) Circular No.16 | October 4, 2004 |
| 41. | A.P.DIR(Series) Circular No.39 | April 25, 2005 |
| 42. | A.P.DIR(Series) Circular No.44 | May 17, 2005 |

| | | |
|-----|------------------------------------|--------------------|
| 43. | AP (DIR Series) Circular No. 04 | July 29, 2005 |
| 44. | A.P. (DIR Series) Circular No. 06 | August 11, 2005 |
| 45. | A.P. (DIR Series) Circular No. 07 | August 17, 2005 |
| 46. | A.P. (DIR Series) Circular No. 08 | August 25, 2005 |
| 47. | A. P. (DIR Series) Circular No. 10 | August 30, 2005 |
| 48. | A.P. (DIR Series) Circular No. 11 | September 05, 2005 |
| 49. | A.P. (DIR Series) Circular No.16 | November 11, 2005 |
| 50. | A.P.(DIR Series) Circular No. 24 | January 25, 2006 |
| 51. | A.P.(DIR Series) Circular No. 4 | July 28, 2006 |
| 52. | A.P.(DIR Series) Circular No. 5 | August 16, 2006 |
| 53. | A.P.(DIR Series) Circular No. 12 | November 16, 2006 |
| 54. | A.P.(DIR Series) Circular No. 25 | December 22, 2006 |
| 55. | A.P.(DIR Series) Circular No. 32 | February 8, 2007 |
| 56. | A.P.(DIR Series) Circular No. 40 | April 20, 2007 |
| 57. | A.P.(DIR Series) Circular No. 62 | May 24, 2007 |
| 58. | A.P.(DIR Series) Circular No. 65 | May 31, 2007 |
| 59. | A.P.(DIR Series) Circular No. 73 | June 8, 2007 |
| 60. | A.P.(DIR Series) Circular No. 74 | June 8, 2007 |
| 61. | A.P.(DIR Series) Circular No. 2 | July 19, 2007 |
| 62. | A.P.(DIR Series) Circular No. 20 | December 14, 2007 |
| 63. | A.P.(DIR Series) Circular No. 22 | December 19, 2007 |
| 64. | A.P.(DIR Series) Circular No. 23 | December 31, 2007 |
| 65. | A.P.(DIR Series) Circular No. 40 | April 28, 2008 |
| 66. | A.P.(DIR Series) Circular No. 41 | April 28, 2008 |
| 67. | A.P.(DIR Series) Circular No. 44 | May 30, 2008 |