PAPER 4

CORPORATE AND ALLIED LAWS

ADDITIONAL READING MATERIAL ON ALLIED LAWS

BOARD OF STUDIES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

A WORD ABOUT THIS ADDITIONAL READING MATERIAL

The liberalisation and globalisation of our economic policies in tune with the global changes brought several reforms in the Corporate and Allied Laws of our country. A scheme of well-structured Corporate and Allied Laws is sine qua non for the corporate growth. These laws have to be amended and fine tuned from time to time in accordance with the changes that are taking place within the country as well as outside.

The Board of Studies, the academic wing of the Institute of Chartered Accountants of India has been taking proactive initiatives in imparting the distance education to the students pursuing the Chartered Accountancy course.

At the Final Level, Paper 4 deals with Corporate and Allied Laws which consists of two sections i.e. Section A relating to Company Law and Section B dealing with allied laws.

For the section of Allied Laws, apart from Study Material, we have introduced Additional Reading Material which includes various Rules, Regulations and Guidelines which are not covered in the study material. The Additional Reading Material has come into picture only for the basic understanding of the provisions covered in the study material of Corporate and Allied Laws. After studying this, you will get the knowledge of the following:

- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997
- SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999
- SEBI (Prohibition of Insider Trading) Regulations, 1992
- Corporate Affairs Standards
- ICSI Secretarial Standards
- FEMA, Rules & Regulations – A Snap shot
- Board for Industrial and Financial Reconstruction (BIFR)

Students may note that the Rules, Regulations and Guidelines covered in the Additional Reading Material might face many amendments in the coming future. For further amendments, students may refer the following websites for upgrading their knowledge.

For SEBI	www.sebi.gov.in
For Corporate Affairs Standards	www.icai.org
For ICSI Secretarial Standards	www.icsi.edu
For FEMA, Rules & Regulations	www.rbi.org.in
For BIFR	www.bifr.nic.in

ALLIED LAWS

SEBI RULES/ REGULATIONS

SECURITIES AND EXCHANGE BOARD OF INDIA

(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997

Salient Features of the Regulations

Offer Size

The Regulations currently require that on acquisitions resulting in triggering regulations 10, 11 and 12, the acquirer is mandatorily required to make an open offer for a minimum of 20 % of the voting capital (reckoned as on the fifteenth day after closure of the offer).

Minimum Public Shareholding Requirements

The Takeover Regulations currently provide that if the acquisition made pursuant to an open offer results in the public shareholding in the target company falling below the minimum level required as per the listing agreement, the acquirer shall take necessary steps to facilitate compliance with the relevant provisions thereof, within the time period specified therein.

Thresholds for Open Offers - Initial Threshold

The Takeover Regulations currently provide that if an acquirer acquires or agrees to acquire shares or voting rights such that his voting rights exceed 15 % of the voting capital of the target company, he is required to make an open offer.

Creeping Acquisitions

The Takeover Regulations currently provide that if an acquirer already holds more than 15 % but less than 55 %, he may acquire additional shares carrying not more than five % of voting rights within a financial year without having to make an open offer.

Further, where the holding is above 55 % but less than 75 %, a one-time allowance to increase their shareholding by 5 % through market purchases or pursuant to a Buy back by the target company, without having to make an open offer, has been permitted since October 28, 2008 provided that post acquisition holding of acquirer does not go beyond 75 %.

Voluntary Offers

Currently, the Takeover Regulations provide for consolidation of shareholding by an acquirer who is desirous of maximizing his shareholding without breaching the minimum public shareholding requirements. The offer size for an open offer under this provision is the lower of 20 % or the maximum permissible acquisition without breaching the minimum public shareholding requirement.

Control

The Takeover Regulations currently provide for inclusive definition of -control. It is provided under the Takeover Regulations that control shall include the right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholder agreements or voting agreements or in any other manner.

Offer Price

The Takeover Regulations currently provide the parameters to be considered for determining the minimum offer price depending on whether or not the shares of the target company are -frequently traded (shares which have annualized trading volume of 5 % or more of the listed share capital during a period of 6 calendar months preceding the month in which the public announcement is made). Such parameters for frequently traded shares include the price under the agreement for acquisition that attracted the open offer, any price paid by the acquirer or persons acting in concert during a 26-week period preceding the public announcement (termed as the -look back period), and the historical market average price of the shares for a proximate past period.

For -infrequently traded shares, the Takeover Regulations require the computation of the offer price on the basis of financial parameters such as return on net worth, industry price-earnings multiples and the like, apart from any price actually paid by the acquirer or persons acting in concert during the look back period, or in the transaction that triggers the open offer obligation.

The Takeover Regulations also require addition to the open offer price, of any amount paid towards non-compete fee in excess of 25 % of the open offer price.

Indirect Acquisitions - *Trigger for indirect acquisitions*

The Takeover Regulations currently provide that acquirer has to make an open offer for shares of the target company when there is direct or indirect change of control of the target company irrespective of any direct acquisition of shares of the target company. The regulations also provide for deferment of open offer obligations till consummation of the original transaction.

Timing and Offer Price

The Takeover Regulations currently provide that in case of indirect acquisition of shares or change of control, a public announcement may be made by the acquirer at any time from the date of the initial announcement of the intention to acquire or entering in to the acquisition agreement, until completion of three months after the consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company.

The Takeover Regulations currently do not differentiate between open offers arising due to direct acquisitions vis-à-vis indirect acquisitions for computation of offer price and the same offer price formula prescribed for direct acquisitions is used for indirect acquisitions as well, and the practice is to compute the offer price as of the date of the announcement of primary acquisition and as of the date of the public announcement for the target company, whichever is higher.

Withdrawal of open offer

The Takeover Regulations currently provide that no open offer, once made, shall be withdrawn except under the following circumstances:

(a) the statutory approval(s) required have been refused;

(b) the sole acquirer, being a natural person, has died;

(c) such circumstances as in the opinion of SEBI merits withdrawal

Competing Offers

The Takeover Regulations currently provide the opportunity to any person other than the acquirer to make a competing offer within 21 days of the public announcement of the first offer. The Takeover Regulations also provide that any competitive offer by an acquirer shall be for such number of shares which, when taken together with shares held by him shall be at least equal to the holding of the first bidder including the number of shares for which the present offer by the first bidder has been made.

Obligations of the Target Company- *Material Actions*

The Takeover Regulations currently provide that the target company shall not, during the offer period sell, transfer, encumber or otherwise dispose of assets of the company or its subsidiaries or enter into any material contracts.

Composition of the Board

The Takeover Regulations currently provide that till the offer formalities are completed, the target company shall be precluded from inducting any person or person nominated by the acquirer or belonging to his group into the board of the target company other than in cases, where acquirer deposits full consideration in an escrow account.

Timelines for the Open Offer process

The Committee discussed the current timelines for an open offer under the existing Takeover Regulations and reviewed the same with a view to shorten the timelines.

Mode of Payment

The Takeover Regulations currently provide that offer consideration shall be payable either

(a) by way of cash; (b) by issue, exchange and, or transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or (c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum ‗A' grade rating from a credit rating agency registered with the Board; or (d) a combination of clause (a), (b) or (c).

Exemptions from open offer obligations

The Takeover Regulations currently provide for fourteen categories of transactions which are exempted from the requirement to make an open offer subject to satisfying the conditions specified therein, if any, without the need to seek SEBI's approval for the same. Further, for the transactions that are not covered in the aforesaid fourteen categories, an application can be made for seeking exemption from SEBI. Such applications are referred to a takeover panel for its recommendations. SEBI considers the recommendations received and passes an appropriate order.

Recommendation by the independent directors of the Target Company

The Takeover Regulations currently provide that the board of directors of the target company may, if they so desire, send their unbiased comments and recommendations on the offer(s) to the shareholders, keeping in mind the fiduciary responsibility of the directors to the shareholders.

Obligations of the Acquirer - ***Disposal of assets of the Target Company***

The Takeover Regulations currently provide that where the acquirer has not stated his intention to dispose of or otherwise encumber any assets of the target company except in the ordinary course of business of the target company, the acquirer shall be debarred from disposing of or otherwise encumbering the assets of the target company for a period of 2 years from the date of closure of the public offer.

Obligations of the Merchant Banker

The Takeover Regulations currently provide that the merchant banker shall ensure compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard and provide other specific obligations under Regulations 24 of the current Takeover Regulations.

Disclosure Obligations

The current Takeover Regulations obligate any acquirer who crosses the specified thresholds to disclose at every stage his aggregate shareholding or voting right to the company concerned and to the stock exchanges where shares of the company are listed. It also obligates a promoter / majority shareholder to annually disclose to the company and the concerned stock exchange regarding the number and percentage of shares or voting rights held by him along with PACs.

For the kind attention of Students

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, known as the Takeover Code in India is all set to become unrestricted and move more in line with the international practices, if the market regulator SEBI accepts the suggestions made by **Transaction Regulation Advisory Committee (TRAC)**. The Committee has re write the entire regulations. The Highlights of recommendation submitted by TRAC are given below:

1. **Increase in threshold limit** to 25% as against the present 15% stake in the Target Company.
2. **Increase in Offer Size** from the present 20% to 100% stake in the Listed Target Company in case of mandatory Open Offer.
3. **Creeping acquisition upto 5%** subject to the acquirer post acquisition shareholding not exceeding 75% in the Target Company.
4. **In case of Voluntary Open Offer**, the committee has proposed a minimum cap on the offer size which could be 10% and upper limit of 75%.
5. **Option to delist** in case the acquirer shareholding is increasing beyond the maximum permissible non-public shareholding.
6. Provisions relating to **Exemptions from open offer obligations** have been made precise and streamlined.
7. **Offer Price** to be based on 12 weeks volume weighted average of market prices as against higher of weekly averages of market prices for 26 weeks or 2 weeks.
8. Increase in the time period for making the **Competitive bid**.
9. **Mandatory execution of the agreement** within 26 weeks after the offer period.
10. **Execution of the agreement** also allowed during the **pendency of the Open Offer** provided 100% of the consideration payable under the open offer is deposited in escrow.
11. **Short Public Announcement** on the date of entering into the agreement followed by a detailed public statement within five business days thereafter.
12. Proposal to **mandate the recommendation** on the open offer, by a committee of independent directors of the target company.

SECURITIES AND EXCHANGE BOARD OF INDIA (EMPLOYEE STOCK OPTION SCHEME AND EMPLOYEE STOCK PURCHASE SCHEME) GUIDELINES, 1999

Introduction

The Securities and Exchange Board of India issued the "Employee Stock Option Scheme and Employee Stock Purchase Scheme, Guidelines,1999" to regulate Employee Stock Option Plans under Section 11 of the SEBI Act,1992. These Guidelines came into effect from June 19, 1999. These guidelines were structured on the basic principles of complete disclosure and shareholder approval in the implementation of this scheme. Uptill, many amendments were made, however the recent amendment is made on the September 3, 2009. These Guidelines is applicable to any company whose shares are listed on any recognised Stock Exchange in India.

Important Definitions

"employee stock option" means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.

"employee stock option scheme (ESOS)" means a scheme under which a company grants employee stock option.

"employee stock purchase scheme (ESPS)" means a scheme under which the company offers shares to employees as part of a public issue or otherwise

This guideline is studied under two headings. Part A deals with the regulation of ESOS whereas Part B deals with the regulation of ESPS.

Part A: ESOS (Employee Stock Option Scheme)

Salient Features of the Employee Stock Option Scheme

The salient features of the employee stock option scheme of the company includes the conditions regarding vesting, exercise, adjustment for corporate actions, and forfeiture of vested options. If the option administrator (whether the company itself or an outside securities firm appointed for this purpose) provides advisory services to the option grantees in connection with the exercise of options or sale of resulting shares, such advice must be accompanied by an appropriate disclosure of concentration and other risks. The option administrator should conform to the code of conduct appropriate for such fiduciary relationships.

Eligibility to participate in ESOS:

An employee shall be eligible to participate in ESOS of the company. The term employee as per this guidelines includes a permanent employee of the company working in India or out of India; or a director of the company, whether a whole time director or not; or an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company.

But where such employee is a director nominated by an institution as its representative on the Board of Directors of the company –

(i) the contract/ agreement entered into between the institution nominating its employee as the director of a company and the director so appointed shall, inter-alia, specify the following:

  (a) whether options granted by the company under its ESOS can be accepted by him in his capacity as director of the company;

  (b) that options, if granted to the director, shall not be renounced in favour of the nominating institution; and

  (c) the conditions subject to which fees, commissions, ESOSs, other incentives, etc. can be accepted by the director from the company.

(ii) the institution nominating its employee as a director of a company shall file a copy of the contract/ agreement with the said company, which shall, in turn, file the copy with all the stock exchanges on which its shares are listed.

(iii) the director so appointed shall furnish a copy of the contract/ agreement at the first Board meeting of the company attended by him after his nomination.

Exceptions:-

There are certain exceptions to the above provision where an employee is not eligible to participate on the ESOS-

1. An employee who is a promoter or belongs to the promoter group shall not be eligible to participate in the ESOS.
2. A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOS.

Compensation Committee:

The Compensation Committee shall be a Committee of the Board of directors constituted by company to formulate the detailed terms and conditions of the ESOS for its administration and superintendence. The Compensation Committee shall frame suitable policies and systems to ensure that there is no violation of;

(a) Securities and Exchange Board of India (Insider Trading) Regulations, 1992; and

(b) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, by any employee.

Shareholder approval:

No employees to the company can be accessible to draw the benefit of the ESOS unless the shareholders of the company approve ESOS by passing a special resolution in the general meeting. The proposed resolution and the explanatory statement of notice shall contain the following particulars–

- Number of options to be granted
- Identification of classes of employees to participate
- Requirements and period of vesting
- Exercise price, exercise period, and process of exercise
- Appraisal process for determining the employees eligibility
- Maximum number of options to be issued per employee
- Method which company will use to value its options

In certain situations approval of shareholders shall be obtained by the company through the passing of separate resolution.

Variation of terms of ESOS:

The company shall not vary the terms of the ESOS in any manner, which may be unfavorable to the interests of the employees. However,the company may by special resolution in a general meeting vary the terms of ESOS offered pursuant to an earlier resolution of a general body but which have not yet exercised by the employee provided such variation is not prejudicial to the interests of the option holders.

Lock-in period and rights of the option-holder:

There shall be a minimum lock-in period of one year between the grant of options and vesting of option.

The employee(Option holder) shall not have-

- right to receive any dividend, or
- to vote, or
- to enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued on exercise of option.

Consequence of failure to exercise option:

The amount payable by the employee, if any, at the time of grant of option;-

(a) may be forfeited by the company if the option is not exercised by the employee within the exercise period; or

(b) the amount may be refunded to the employee if the option are not vested due to non-fulfillment of condition relating to vesting of option as per the ESOS.

Non transferability of option:

- Option granted to an employee shall not be transferable to any person.
- The option granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
- In the event of the death of employee while in employment, all the option granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
- In case the employee suffers a permanent incapacity while in employment, all the option granted to him as on the date of permanent incapacitation, shall vest in him on that day.
- In the event of resignation or termination of the employee, all options not vested as on that day shall expire.
- The options granted to a director, who is an employee of an institution and has been nominated by the said institution, shall not be renounced in favour of the institution nominating him.

Disclosure in the Directors' Report:

The Board of Directors, shall disclose the relevant details of the ESOS either in the Directors' Report or in the annexure to the Directors' Report. Such details may include-

(a) options granted;

(b) the pricing formula;

(c) options vested;

(d) options exercised;

(e) the total number of shares arising as a result of exercise of option;

(f) options lapsed;

(g) variation of terms of options;

(h) money realised by exercise of options;

(i) total number of options in force;

(j) employee wise details of options granted to;-

- senior managerial personnel;
- any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year.
- identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

(k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of option calculated in accordance Accounting Standard (AS) 20 'Earnings Per Share'.

(l) Where the company has calculated the employee compensation cost using the intrinsic value of the stock options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.

(m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.

(n) A description of the method and significant assumptions used during the year to estimate the fair values of options:

- risk-free interest rate,
- expected life,
- expected volatility,
- expected dividends, and
- the price of the underlying share in market at the time of option grant.

Accounting Policies

Every company that has passed a special resolution in the general meeting for an ESOS of these guidelines, shall comply with the accounting policies specified in Schedule I.

Certificate from Auditors:

In the case of every company that has passed a special resolution for an ESOS in the general meeting, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme has been implemented in accordance with these guidelines and in accordance with the resolution of the company in the general meeting.

PART B: ESPS (Employees Stock Purchase Scheme)

Eligibility to participate in ESPS:

An employee shall be eligible to participate in the ESPS. The term 'Employee' includes a permanent employee of the company working in India or out of India; or a director of the company, whether a whole time director or not; or an employee as defined in sub-clauses (a) or (b) of a subsidiary, in India or out of India, or of a holding company of the company.

Following are the employees' who shall not be eligible to participate -

- An employee who is a promoter or belongs to the promoter group.
- A director who either by himself or through his relatives or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company .

Shareholder Approval:

No ESPS shall be offered to employees of the company unless the shareholders of the company approve ESPS by passing special resolution in the meeting of the general body of the shareholders. The special resolution shall state that the company shall conform to the accounting policies given in the guidelines.

The explanatory statement to the notice shall specify:

(a) the price of the shares and also the number of shares to be offered to each employee.

(b) the appraisal process for determining the eligibility of employee for ESPS.

(c) Total number of shares to be issued.

Approval of shareholders by way of separate resolution in the general meeting shall also be obtained by the company in cases, as to allotment of shares to employees of subsidiary or holding company and, allotment of shares to identified employees.

Pricing and Lock-in:

The company shall have the freedom to determine price of shares to be issued under an ESPS, subjected to the approval of the shareholders by passing special resolution in the meeting of the general body of the shareholders.

Shares issued under an ESPS shall be locked in for a minimum period of one year from the date of allotment.

If the ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employee pursuant to ESPS shall not be subject to any lock-in.

Disclosure and Accounting Policies:

The Directors' Report or Annexure thereto shall contain the following disclosures:

(a) the details of the number of shares issued in ESPS;

(b) the price at which such shares are issued;

(c) employee-wise details of the shares issued to;

- senior managerial personnel;
- any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;
- identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;

(d) diluted Earning Per Share (EPS) pursuant to issuance of shares under ESPS; and

(e) consideration received against the issuance of shares.

Listing:

The shares arising pursuant to an ESOS and shares issued under an ESPS shall be listed immediately upon exercise in any recognized stock exchange where the securities of the company are listed subject to compliance of the following:

(a) The ESOS/ESPS is in accordance with these Guidelines.

(b) In case of an ESOS the company has also filed with the concerned stock exchanges, before the exercise of option, a statement as per Schedule V and has obtained in-principle approval from such Stock Exchanges.

(c) As and when ESOS/ ESPS are exercised the company has notified the concerned Stock Exchanges as per the statement as per Schedule VI of this Guidelines.

For listing of shares issued pursuant to ESOS or ESPS the company shall obtain the in-principle approval from Stock Exchanges where it proposes to list the said shares.

The listed companies shall file the ESOS or ESPS Schemes through EDIFAR filing.

The Company shall appoint a registered Merchant Banker for the implementation of ESOS and ESPS as per these guidelines till the stage of framing the ESOS/ESPS and obtaining in-principal approval from the stock exchanges.

SECURITIES AND EXCHANGE BOARD OF INDIA

(PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

Introduction

The Securities and Exchange Board of India with the approval of the Central Government, made the regulations, called as the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, for the prevention of Insider Trading activities within the Company.

Who is an insider?

As per the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, "insider" means any ***person*** *who,*

(i) **is or was connected with the company** or is **deemed to have been connected with the company** and is reasonably expected to have access to unpublished **price sensitive information** in respect of securities of a company, or

(ii) has received or has had access to such ***unpublished price sensitive information***.

Here the **"connected person"** means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act, or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

"person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.

What is price sensitive information

"price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;

(vii) and significant changes in policies, plans or operations of the company.

"Unpublished information" means information which is not published by the company or its agents and is not specific in nature. This may include Speculative reports in print or electronic media.

PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING

Regulation 3 of the SEBI (Prohibition of Insider Trading Regulations, 1992) lays down the rule as to the **prohibition on dealing, communicating or counseling on matters relating to insider trading.**

No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Regulation 3A says that no company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

INVESTIGATION IN THE MATTER OF INSIDER TRADING

Regulation 4A to Regulation 10 lays down the procedure for the Investigation in the case of Insider Trading.

(I) Power to make inquiries and inspection.

(1) If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (*i*) of sub-section (2) of section 11 as deemed fit, to form a *prima facie* opinion as to whether there is any violation of these regulations.

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of sub-section (2) of section 11 for the purpose of sub- regulation (1**).** *[Regulation 4A]*

(II) Board's right to investigate.

Where the Board, is of *prima facie* opinion that it is necessary to investigate and inspect the books of account, either records and documents of an insider or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act for any of the purposes specified in sub- regulation (2), it may appoint an investigating authority for the said purpose.

The purpose referred to above is :

(*a*) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading; and

(*b*) to investigate *suo-motu* upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations**.** ***[Regulation 5]***

(III) Procedure for investigation.

Before undertaking any investigation, the Board shall give a reasonable notice to insider for that purpose**.** *[Regulation 6]*

(IV) Obligations of insider on investigation by the Board.

It shall be the duty of every insider, who is being investigated or any other person mentioned in clause (*i*) of sub-section (1) of section 11 of the Act to produce to the investigating authority such books, accounts and other documents in his custody or control and furnish the authority with the statements and information relating to the transactions in securities market within such time as the said authority may require.

The insider or any other person mentioned in clause (*i*) of sub-section (2) of section 11 of the Act shall allow the investigating authority to have reasonable access to the premises occupied by such insider and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which in the opinion of the investigating authority are relevant. The investigating authority, in the course of investigation, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the insider or any other person mentioned in clause (*i*) of sub-section (2) of section 11 of the Act.

It shall be the duty of every director, proprietor, partner, officer and employee of the insider to give to the investigating authority all assistance in connection with the investigation, which the insider or any other person mentioned in clause (*i*) of sub-section (2) of section 11 of the Act may be reasonably expected to give**.** *[Regulation 7]*

(V) Appointment of Auditor.

The Board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act, Provided that, the auditor so appointed shall have the same powers of the inspecting authority in regulation 5 and the insider shall have the obligations specified in regulation 7. *[Regulation 10]*

FRAMING OF POLICIES ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

Regulations 12 to 14 of the SEBI(prohibition of the Insider Trading)Regulation,1992 lays down rules as to framing of the corporate disclosures policies and the code of internal procedure and conduct for the prevention of the Insider trading by any Company.

Code of internal procedures and conduct for listed companies and other entities.

All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b the self-regulatory organizations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same. *[Regulation 12]*

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies –*[Regulation 13]*

(I) Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of-

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

(II) Continual disclosure

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in

Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub- regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

E-filing.

(7) The disclosures required under this regulation may also be made through electronic filing in accordance with the system devised by the stock exchange.

Action in case of default

Without prejudice to the directions under regulation 11, if any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11B, 11D, Chapter VIA and Section 24 of the Act. *[Regulation 14]*

Appeal to the Securities Appellate Tribunal

Any person aggrieved by an order of the Board under these regulations may prefer an appeal to the Securities Appellate Tribunal. *[Regulation 15]*

CORPORATE AFFAIRS STANDARDS

BUSINESS VALUATION PRACTISE STANDARDS

Introduction

Business valuation is a complex process and it involves a multitude of factors ranging from financial matters to historical perspectives. It is a broad and technically challenging discipline. The valuation is performed in a variety of contexts and for a variety of purposes. **The word value means different things to different people and the result will not be the same, should the context change.** A valuation is not an exact science. The value is subjective term and can have a different connotation. Valuation involves use of professional judgement, knowledge of business, analysis of facts, interpretations and used of different methods and procedures, which may result into different value in each given situation. This implies that the business value must be measured and defined by a 'standard of value' that is relevant, meaningful and reliable.

In this backdrop, considering the growing need, variety and complexity involved in the valuation exercises, **ICAI has decided to develop Business Valuation Practice Standards (BVPS)** which would establish uniform principles, practices and procedures for Valuers performing valuation services.

Purpose of the Standard

The rising demand for valuation services has given new avenues for the finance professionals. Going forward more and more professional would be engaged in performing valuation services. Recognizing these facts the ICAI has developed this Business Valuation Practise Standard for the following purposes:

- Provide guidance to the Valuers in performing valuation services
- Define general valuation concepts, principles, approaches and methods
- Define basis of valuation and premise of valuation
- Set out a code of conduct

Objective of the Standard

The objective is to provide common standards for business valuers who are performing business valuation engagements. Business valuations methods and procedures followed in estimating values vary however, they require similar principles whatever their purpose may be. Therefore, the overall objective is to develop a common standard whereby all types of valuations are covered under one head and a consistent and prudent approach is followed.

In particular, the objectives of the BVPS are:

- To promote 'best practices' and fairness in valuation services
- To promote credibility, relevancy & transparency of valuation information.

- To enhance quality, consistency, comparability and uniformity of valuation practice
- To cover valuation of all assets, liabilities and businesses (cash flows)
- To enhance reliance on the valuation amongst stakeholder
- To improve corporate governance
- To improve public confidence in valuation
- To improve market efficiency

Scope of the Standard

Valuers in India, while performing valuation a engagement, shall follow the requirements of this Standard. Initially the requirement of this standard shall be recommendatory in nature and shall become mandatory from a date to be notified by the Council of ICAI. Valuers outside of India may follow the requirements of this Standard while performing valuation engagement to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations prevalent in that country . ICAI may adopt changes to the Standard to keep in tune with changing business scenarios and requirements and issue interpretations of the Standard to assist the valuers in the in the application of the Standard as and when considered necessary.

Exceptions from the Standard

This Standard is not applicable when:

(i) Estimation of value is part of an attest engagement like audit, review, compilation engagement etc. (But the Valuers are encouraged to keep in view the standards in these cases also.)

(ii) When mechanical computations are carried out that do not rise to the level of an engagement to estimate value; that is, when the Valuer does not apply valuation approaches and methods and does not use professional judgment.

(iii) Engagements are exclusively for the purpose of determining economic damages (for example, lost profits) unless those determinations include an engagement to estimate value.

(iv) The value of a subject interest is provided to the Valuer by the client or a third party, and the Valuer does not apply valuation approaches and methods, as discussed in this Standard.

(v) It is not practical or not reasonable to obtain or use relevant information; as a result, the Valuer is unable to apply valuation approaches and methods that are described in this Standard

Jurisdictional Exception

Any part of this Standard is in contradiction with any published governmental, judicial, or accounting authority, or such authority specifies valuation procedures, then the Valuer should follow the applicable published authority or stated procedures with respect to that part applicable to the valuation in which the Valuer is engaged. The other parts of this Standard shall continue to apply.

GENERAL AND ETHICAL STANDARDS

This Standard describes the following basic principles which govern the valuer's professional responsibilities and which shall be complied with whenever an engagement to estimate value is carried out.

(i) Professional competence

(ii) Professional due care

(iii) Independence

(iv) Financial Interest

(v) Integrity & objectivity

(vi) Confidentiality

(vii) Skills and Competence

(viii) Understandings and Communications with Clients

(ix) Planning and Supervision

(x) Sufficient Relevant Data

(xi) Remuneration

VALUATION SERVICES

There are broadly two types of engagements to estimate value—a ***valuation engagement*** and a ***calculation engagement***. The valuation engagement requires more procedures than does the calculation engagement. The valuation engagement results in a conclusion of value. The calculation engagement results in a calculated value. The type of engagement is established in the understanding with the client per Terms of Engagement.

OVERALL ENGAGEMENT CONSIDERATIONS

(i) Terms of engagement (TOE)

(ii) Understanding the Nature And Risks Of The Valuation Services

(iii) Assumptions and Limiting conditions

(iv) Scope Restrictions or Limitations

(v) Hypothetical Conditions

(vi) Using work of expert

VALUATION METHODOLOGY

In performing a valuation engagement, the Valuer should:

- Define the Standard and Premise of Value
- Analyze the subject interest and collect the necessary Information
- Adjust the Financial Statement appropriately
- Consider and apply appropriate valuation approaches and methods
- Valuation adjustments
- Conclusion of value
- Subsequent Events
- Prepare and maintain appropriate documentation

REPORTING STANDARDS

For a Valuation Engagement

Detailed Report: This report may be used to communicate the results of a valuation engagement (conclusion of value) in detail.

Summary Report: This report may be used to communicate the results of a valuation engagement (conclusion of value) in an abridged form.

For a valuation engagement, the determination of whether to prepare a detailed report or a summary report is based on the level of reporting detail agreed to by the Valuer and the client.

For a Calculation Engagement

Calculation Report: This type of report should be used only to communicate the results of a calculation engagement (calculated value); it should not be used to communicate the results of a valuation engagement (conclusion of value)

Effective Date

This Standard applies to engagements to estimate value accepted on or after the first day of April 2010. Earlier application of the Standard by the Valuers is encouraged.

Corporate Affairs Standard on

Auditor's Appointment, Retirement and Removal

The following is the CORPORATE AFFAIRS STANDARD – (CAS) – issued by the Council of the Institute of Chartered Accountants of India on "Auditor's Appointment, Retirement and Removal". The standard deals with the legal, regulatory and ethical issues arising from the appointment, retirement and removal of auditor under the Companies Act, 1956.

INTRODUCTION

The purpose of this Standard is to provide guidance when an auditor is appointed or re-appointed or when an auditor resigns, is removed or retires pursuant to sections 224 to 226 of the Companies Act, 1956. This standard deals with the responsibilities of the newly appointed auditor including the First auditor and the resigning, removed or retiring auditor with respect to requirements and compliances under the Companies Act, 1956 in conjunction with the relevant ethical requirements of Institute of Chartered Accountants of India (ICAI).

APPOINTMENT OF FIRST AUDITORS UNDER SECTION 224(5)

(i) Appointment of first auditors and fixation of remuneration – Pursuant to sub-section(5) of section 224 of the Companies Act, the first Auditor or Auditors of a company have to be appointed by the Board of Directors within one month of the date of registration of the company and the Auditor or Auditors so appointed shall hold office until the conclusion of the first Annual General Meeting of the company. The remuneration payable to the Auditor(s) is also, accordingly, fixed by the Board of Directors for the initial year.

(ii) Filling up of vacancy in the office of first auditor. – If, due to any reason whatsoever, there arises a vacancy in the office of the first Auditor of the company, the Board may again appoint another, Auditor or Auditors of a company to hold office until the conclusion of the first Annual General Meeting and fix remuneration therefore.

(iii) On failure of Board to appoint first auditor – Auditor to be appointed by company general meeting.- If the Board, in either or the above cases, fails to exercise its power, the company in the General Meeting has to appoint the first Auditor or Auditors by an ordinary resolution. The first Auditor so appointed should be intimated with seven days of his appointment and then the Auditor must inform the Registrar in Form No.23B* about his accepting or refusing the appointment within one month of the receipt of intimation of his appointment.

(iv) On failure of general meeting to appoint auditor vacancy to be filled in by Central Government. – The residual power to appoint an Auditor in the even of a failure to appoint Auditors by the general body lies with the Central Government, who may appoint a person to fill in the vacancy

RE-APPOINTMENT OF THE RETIRING AUDITOR UNDER SECTION 224

(i) Intimation within seven days – The auditors so appointed should be intimated within seven days of the appointment.

(ii) Written Certificate – Before appointing the auditors a written certificate should be obtained from the proposed auditors to the effect that the said appointment if made will be in accordance with the limits specified in sub- section (1B) of section 224 of the Act.

FILING UP OF CASUAL VACANCY IN THE OFFICE OF AUDITORS UNDER SECTION 224

(i) Board's power.-The board of directors of a company has the power to fill up any casual vacancy in the office of an auditor except casual vacancy caused by resignation of an auditor.

(ii) Intimation within seven days. – The auditors so appointed should be intimated within seven days of the appointment.

Written Certificate. – Before appointing the auditors a written certificate should be obtained from the proposed auditors to the effect that the said appointment if made will be in accordance with the limits specified in sub-section (1B) of section 224 of the Act.

REMOVAL OF AUDITOR APPOINTED IN A GENERAL MEETING UNDER SECTION 224

(i) Removal of Auditor.-Sub-section (7) of section 224 makes special provision for the removal of the auditors before the expiry of their term in General Meeting after obtaining the previous approval of the Central Government in that behalf. This provision has been made to meet a situation where an existing Auditor is unable in fulfil his duties for any reason or is unsuitable for continuing in his appointment.

(ii) Application for removal of auditor to Central Government.- The application for removal of Auditor of the Company before the expiry of his terms of office must be addressed to the Regional Director concerned to whom the power of Central Government has been delegated.There is no prescribed format of this application. The application should set out in detail the reasons for the proposed removal of the Auditor's and it must be accompanied by the following documents.-

(a) A copy each of the Memorandum and Articles of Association of the Company.

(b) Proof of deposit of requisite fee.

The Regional Director may generally obtain an explanation from the concerned auditor about his views on the matter and may also afford an opportunity of being heard personally.

(iv) Forwarding of application.- A copy of the application should be delivered to the concerned Registrar of Companies electronically.

APPOINTMENT AS AUDITOR OF A PERSON OTHER THAN RETIRING AUDITOR UNDER SECTION 225

(i) **Special Notice**. – Special notice is required for a resolution at an Annual General Meeting appointing as auditor a person other than a retiring auditor.

(ii) **Notice to retiring auditor**.- On receipt of notice of the resolution, the Company must send forthwith a copy thereof to the retiring auditor.

(iii) **Mode of sending Special Notice**.- The copy of the special notice under section 225(2) of the Companies Act, 1956 should be sent to the retiring auditors by Registered A.D. Post.

(iv) Auditors representation should be sent to all the members and auditors be informed that they are entitled to be orally heard.

(v) Read the representation of retiring auditors if any at the meeting.

(vi) Shareholders present at the general meeting to orally hear the retiring auditors.

(vii) To put the resolution to vote.

CORPORATE AFFAIRS STANDARD (CAS)

Certification under MCA 21

Objective

The objective of this Corporate Affairs Standard is to establish standard and provide guidance on the practices and procedures to be followed when an engagement to certify various eForms under MCA21 is undertaken.

Scope

MCA21 is an e-Governance Project implemented by Ministry of Corporate Affairs (MCA) under National e-Governance Plan of the Government of India. It facilitates e-filing of various forms and applications under the Companies Act, 1956 and the Rules and Regulations thereunder. MCA21 envisages easy and secure online access to all the services being provided by the Ministry of Corporate Affairs including registration, annual filing of documents and other event based statutory filing by the corporate and public access to corporate information through a portal.

Most of the eForms require the authentication by a responsible officer of a company for proper filing/submission. Authentication of documents by the third party, such as bankers, may also be required in some cases.

In certain cases a certificate, amongst others, from a Chartered Accountant in whole- time practice is also required to authenticate the particulars contained in the eForms. Details of such e-forms and nature of certification are given in the APPENDIX.

While certifying various eForms under MCA21, the practices and procedures laid down by this CAS may be followed.

Important definitions

An "eForm" represents a document in electronic format for filing with MCA authorities through the internet for various compliances under the Act, prescribed by the Central Government through Companies (Central government's) General Rules and forms, 1956. An eForm contains a number of mandatory fields which are required to be filled- in. It may require certain mandatory attachments to be filed along with it.

"Corporate Identity Number (CIN)" is a unique identification for an Indian company under MCA21.

“Foreign Company Registration Number (FCRN)” is a unique identification for a foreign company under MCA21.

“Responsible Officer” in relation to a company means any one of the following:

(a) a director of the company,

(b) manager or secretary of the company,

(c) any other officer or employee of the company, who may from time to time be recognised or declared by the Central Government to be a responsible officer of the company within the meaning and purposes of the Rules.

Concepts and principles

Managements’ responsibility for conducting its business implicitly requires it to take reasonable steps to ensure the compliance of various provisions under the Companies Act, 1956 relating to maintenance of books of accounts and other records, statutory records, passing of resolution by the competent authority such as Board of Directors and members of the company and minutes of such meetings.

The Chartered Accountant’s responsibility in certifying various forms under MCA21 relate to verification and certification of facts. Such certification is neither an audit nor an expression of opinion on records of the company.

Procedures and evidence

Terms of engagement

When a Chartered Accountant in whole-time practice is asked to certify forms under MCA 21, he may take an engagement letter from the client having clear reference to client’s responsibility to provide the information, documentary evidence and maintenance of records. The letter may also contain the basis on which fee is to be computed and the billing arrangement.

The Chartered Accountant may accept the assignment to certify E Forms 22, 23B and 35A only if he is also the statutory auditor of the company as those forms are to be certified by the auditor of the company only.

Authorisation Letters shall be required to be obtained from all the promoters for authentication of eForm 1. In case the promoters include a company, a certified copy of the Board Resolution passed in this regard shall also be obtained.

In case of return, particulars or application being filed on behalf of an existing company, it may be ensured that proper resolution authorising to sign and submit is passed at a properly convened meeting of the Board of Directors of the company. Certified copy of the same may be obtained from the company.

Know your client (KYC) Norms

Sufficient documentary evidence may be obtained for establishing the identity of the client and its address. Original documents of all the photocopies produced may be verified. Personal meeting may be held with all the persons in whose behalf content of various forms are being certified. In the case of a foreign promoter/director, identity and address proofs of the person(s), duly authenticated by an official of Indian embassy of that country, may be obtained.

In case of any doubt regarding the identity of the persons concerned, further enquiries may be made or further documentary evidence may be insisted upon. Even after further enquiry doubts persist, he may refuse to take up the assignment.

KYC norms may be reapplied in case there are any material changes in ownership and/or control of the client entity.

Documentation

When a Chartered Accountant in whole-time practice is asked to certify forms under MCA 21, he may document matters which are important in providing evidence that due care was taken in verification of facts.

The Chartered Accountant may obtain representations from the client where consider appropriate and should evaluate whether the representations made by the client appear reasonable and consistence with other evidence obtained.

All the documentary evidence obtained in the course of certification along with copies of other important records of a client such as Memorandum of Association and Articles of Association, list of present directors, location of registered and other offices may be kept in a separate file.

In the case of formation of a new company, subscription clause may be filled in and signed by the subscribers to the Memorandum in the presence of the chartered accountant and a written confirmation from the proposed directors may be obtained from them that they are not disqualified to be appointed as director of a company. In case, promoters are located outside India, subscription clause and confirmation letter mentioned above may be accepted if that is duly notarized and authenticated by an official of Indian Embassy in that country where the promoters are residents.

A Digital Signature Register for may be maintained to keep the record of particulars of document/form /return certified for aparticular client, date and time of such certification.

The digital signature may be obtained from the authorised and accredited agency only and may be kept in safe custody.

Copies of all the eForms certified by the Chartered Accountant should be stored in computer and backup of such information should be taken on periodical basis.

The Chartered Accountant may adopt reasonable procedure for custody and confidentiality of the working papers and should retain them for a period of time sufficient to meet the need of his practice and satisfy any pertinent legal or professional requirements of record retention.

Evaluation process

While verifying documentary evidences and evaluating results thereof, the Chartered Accountant may consider the risk of material misstatement in them resulting from fraud and error.

It may be ensured that the legal process required to be performed before filing the related e-Form has been completed. For example, in case of change in location of registered office from one state to other, process as per section 17 of the Act has been carried out.

It may be ensured that the eForm being filed is duly authorized to be filed by the Board of Directors of the company and the person filing the eForm has been duly authorised by the board of Directors of the company. Due care may be taken in case it appears to be any dispute amongst the members of the Board of Directors or members of the client company and ensure that eForm is being filed with either unanimous consent of all the parties or after going through all the due process as provided in the Act.

The Chartered Accountant may obtain a general knowledge of the business and operations of the client and perform reasonable verification to ensure that the company is complying with laws and regulations applicable to that company.

The forms may be filled in and report may be prepared with due professional care by persons who have adequate training, experience and competence in computer software application.

It may be ensured that Ministry of Corporate Affairs instructions for filling the respective forms have been followed strictly and all the required attachments are enclosed with the respective E Forms.

Certification

It may be reviewed and assessed from the documentary evidence produced, explanation and information given and enquiries made whether the information required to be certified is true and correct.

If required, independent enquiry may be made to verify the facts and figures provided by the client.

Only after such review and assessment, the Chartered Accountant may affix his digital signature on the document for its authentification.

Confidentiality

The Chartered Accountant may respect the confidentiality of information acquired in the course of his work and may not disclose any such information to a third party without the specific authority or unless there is legal or professional duty to disclose.

Effecting date

This Corporate Affairs Standard shall become operative from the date of its announcement by the Council of the Institute of Chartered Accountants of India.

ICSI SECRETARIAL STANDARDS

THE SECRETARIAL STANDARDS

Introduction

The Institute of Company Secretaries of India (ICSI) is the recognized professional body in India. In order to recognize the need for integration, harmonisation and standardisation of diverse secretarial practices, ICSI, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

This body has been constituted to identify the areas in which Secretarial Standards needed to be issued and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of the corporates and other users.

The main functions of SSB are:

(i) Formulating Secretarial Standards;

(ii) Clarifying issues arising out of the Secretarial Standards;

(iii) Issuing Guidance Notes; and

(iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

As miscellaneous secretarial practices are trailed by the Companies and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

These Secretarial standards are considered as supplement which are in conformity with the provisions of the applicable laws, rules and regulations.

The Institute of Company Secretaries of India, recognizing this need, has issued ten Secretarial Standards on topics namely-

- Meetings of the Board of Directors (SS-1)
- General Meetings (SS-2)
- Dividend (SS-3)
- Registers and Records (SS-4)
- Minutes (SS-5)
- Transmission of Shares and Debentures (SS-6)
- Passing Resolutions by Circulation (SS-7)
- Affixing of Common Seal (SS-8)
- Forfeiture of Shares (SS-9)
- Secretarial Standards on Board's Report(SS-10)

Compilation of these Secretarial Standards by the corporate sector will lead to good corporate governance practices, making them comparable with best practices in the world.

In the initial years, the Secretarial Standards will be recommendatory. The Standards would be made mandatory by the Government and other appropriate authorities on the request of the Institute after educating the users about the utility and need for compliance with these standards.

SECRETARIAL STANDARD-1 (SS-1)

Secretarial Standard on Meetings of the Board of Directors

This Standard seeks to prescribe a set of principles for the convening and conduct of Meetings of the Board of Directors and matters related thereto.

The principles enunciated in this Standard for meetings of the Board of Directors are equally applicable to meetings of Committees, unless otherwise stated herein or otherwise stipulated by any other applicable guidelines, Rules or Regulations.

Although a company is a legal entity, it cannot act by itself and can do so only through its Directors, thus establishing a relationship of principal and agent. Moreover, Directors are in a fiduciary position vis-à-vis the company and, to that extent, they are also deemed to be trustees of the properties and assets of the company. They owe a duty to the shareholders and should exercise care, skill and diligence in the discharge of their functions and in the exercise of the powers vested in them. All the powers vested in Directors are exercisable by them only collectively. As an individual Director, no Director has the power to act on behalf of the company unless such powers have been delegated to him by the Board.

SECRETARIAL STANDARD-2 (SS-2),

Secretarial Standard On General Meetings

This Standard seeks to prescribe a set of principles for the convening and conduct of General Meetings and matters related thereto.

The decision-making powers of a company are vested in its Members and the Board of Directors (the Board). Such powers are exercisable through Meetings of the Members and the Board respectively. Except where the law expressly provides that certain powers of a company are to be exercised only by the company in General Meeting, the Board is entitled to exercise all the powers of the company. Although Members acting through the forum of a General Meeting exercise ultimate check over a company, they should not interfere with the exercise by the Board of the powers which are vested in the Board.

Every company is required to hold, every year, a Meeting of its Members called the Annual General Meeting and may also hold any other meeting, called an Extra-Ordinary General Meeting, as and when required or on the requisition of Members. The business to be transacted at an Annual General Meeting may consist of items of ordinary business as well as special business. The items of ordinary business specifically required to be transacted at an Annual General Meeting should not be transacted at any other General Meeting.

Every public company having a share capital is also required to hold a Statutory Meeting. If a company defaults in holding its Annual General Meeting in any year, any Member of the company has a statutory right to approach the prescribed authority to direct the company to hold the Meeting.

A company may also hold Meetings of its Members, or class of Members or debenture holders or creditors under the directions of the Court or the Company Law Board or any other prescribed authority, and any such Meeting shall be governed by the Articles or by the rules, regulations and directions prescribed for the conduct of any such Meeting.

The principles enunciated in this Standard for General Meetings may also be applicable to class meetings of Members, debenture holders and creditors. These principles may, however, not be applicable to any meeting convened on the directions of the Court or the Company Law Board or any other prescribed authority unless the directions themselves so prescribe.

This Standard does not deal with passing of resolutions by postal ballot.

SECRETARIAL STANDARD-3 (SS-3),

Secretarial Standard on Dividend

This Standard seeks to prescribe a set of principles in relation to the declaration and payment of Dividend and matters incidental thereto or connected therewith.

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest. For the purposes of this Standard, capitalization of profits in the form of bonus shares is not Dividend.

In commercial usage, the term “Dividend” refers to the share of the profits of a company that is distributed amongst the Members of the company.

The term “Dividend” has been inclusively defined in the Companies Act, 1956, (“the Act”) to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between interim and final Dividend.

The principles enunciated in this Standard for Dividend relate to Dividend under the Act and are governed by the provisions of Sections 205, 205A, 205B, 205C, 206, 206A, 207 of the Act and also by the Companies (Transfer of Profits to Reserves) Rules, 1975, the Companies (Declaration of Dividend out of Reserves) Rules, 1975 and the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. The provisions of Section 27 of the Securities Contracts (Regulation) Act, 1956 are also applicable as are, in the case of listed companies, the requirements of the Listing Agreement. Any specific provision relating to Dividend in the Income Tax Act, 1961, and any other statute would, in addition, be applicable as set out in that statute/legislation.

The principles set out herein relate to both equity as well as preference share capital in accordance with the provisions of Sections 85 and 86 of the Act. While the principles generally relate to final Dividend, certain principles also apply to Interim Dividend declared by the Board of Directors, as stated hereinafter. Further, the principles set out herein are in respect of Dividend as it relates to a going concern. This Standard does not deal with Dividend of companies under liquidation, for which reference has been made in the Guidance Note on the subject.

SECRETARIAL STANDARD-4 (SS-4)

Secretarial Standard On Registers And Records

Under the Companies Act, 1956, a company is required to maintain certain registers and records. There are some other registers and records, the maintenance of which is not statutorily required but is essential for the smooth, efficient and systematic functioning of the company.

This Secretarial Standard seeks to prescribe a set of principles in relation to various registers and records including the maintenance and inspection thereof.

Some of the registers and records are required to be kept open by a company for inspection by directors and members of the company and by other persons, including creditors of the company. The right to inspect such registers and records is an enforceable right. Companies are also required to allow extracts to be made from certain documents, registers and records and to furnish copies of certain documents, registers and records on demand by a member or by any other specified person. Government authorities have the right of access to all registers and records. Non-compliance with the provisions relating to maintenance, preservation and inspection of registers and records, to the extent they are statutory, creates punishable offences and leads to various penalties on the company, the directors and every officer in default.

In respect of records such as minutes books of Board meetings, committee meetings and general meetings of a company, as well as notices and agenda of meetings and notes on agenda, detailed reference has been made in the 'Secretarial Standard on Meetings of the Board of Directors' (SS - 1) and the 'Secretarial Standard on General Meetings' (SS-2) and their respective Guidance Notes. Hence, these records are not dealt with in this Secretarial Standard.

The Information Technology Act, 2000, permits the maintenance of registers and records in electronic mode. Such registers and records should be maintained in accordance with the provisions of the said Act.

The principles enunciated in this Secretarial Standard are governed by the Companies Act, 1956 and the rules and regulations framed thereunder as well as several provisions of the

Securities and Exchange Board of India Act, 1992 and the rules, regulations and guidelines framed thereunder.

SECRETARIAL STANDARD-5 (SS-5)

Secretarial Standard On Minutes

This Standard seeks to prescribe a set of principles for the recording of Minutes of the Meetings of:

(a) the Board or Committees of the Board,

(b) members,

(c) debenture holders,

(d) creditors,

(e) others as may be required under the Act,

and matters related thereto.

The expression “minutes” means a brief summary of the proceedings of a meeting. Minutes should contain a fair and correct summary of the proceedings of the meeting and should normally convey why, how and what conclusions were arrived at in relation to each business transacted at the meeting. It need not be an exact transcript of the proceedings. Every company is required to keep Minutes of all meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

The Company Secretary or authorized official of the company should record the proceedings of the meetings.

This Standard applies to Minutes of Meetings governed by the Act. The principles enunciated in this Standard are also applicable to class meetings of Members, debenture holders and creditors. These principles may also be applicable to any meeting convened on the directions of the Court or the Company Law Board or any other prescribed authority unless otherwise directed.

SECRETARIAL STANDARD-6 (SS-6)

Secretarial Standard On Transmission Of Shares And Debentures

The word “transmission” means devolution of title to Shares otherwise than by transfer.

On transmission of Shares, the person to whom the Shares are transmitted becomes the registered shareholder of the company and is entitled to all rights and subject to all liabilities attached to the Shares.

In case the deceased held Shares in more than one company, the legal heir(s)/Nominee has to correspond with each of the companies by submitting relevant documents, along with the share certificates to effect transmission of Shares.

In case of dematerialized holdings, the formalities for transmission of all securities can be completed by submitting the documents required by the Depository Participant.

This Standard applies to Transmission of Shares held by individual shareholders in physical mode.

SECRETARIAL STANDARD-7 (SS-7)

Secretarial Standard on Passing of Resolutions by Circulation

A Company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

The Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do subject to the restrictions and limitations imposed by the Act, memorandum and articles and the company in general meeting.

Decisions relating to the policy and operations of the company are arrived at meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective wisdom of the Board.

However, it may not always be practicable to convene a meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to.

This Standard seeks to lay down a set of principles for passing of resolutions by circulation.

SECRETARIAL STANDARD-8 (SS-8)

Secretarial Standard on Affixing of Common Seal

Common seal means the metallic seal of a company which can be affixed only with the approval of the Board of directors of the company. It is the signature of the company to any document on which it is affixed and binds the company for all obligations undertaken in the document.

A company shall have only one common seal.

The Act provides that from the date of incorporation mentioned in the certificate of incorporation, the company shall have a common seal

The Articles of Association provides the procedure relating to affixing of common seal.

This Standard seeks to lay down a set of principles for affixing of the common seal.

SECRETARIAL STANDARD-9 (SS-9)

Secretarial Standard on Forfeiture of Shares

Forfeiture is withdrawal of shares due to non-payment of any call by the shareholder or for any other ground as may be provided in the Articles. On forfeiture of shares the member loses the amount paid thereon and his interest in the ownership of the shares.

This Standard seeks to lay down a set of principles for forfeiture of both equity and preference shares arising from non-payment of calls.

SECRETARIAL STANDARD-10 (SS-10)

Secretarial Standard on Board's Report

The Companies Act, 1956 requires the Board of Directors of every company to present annual accounts to the shareholders along with its report, known as the "Board's Report". Disclosures in the Board's Report are specified under various sections of the Act.

The Board's Report is the most important means of communication by the Board of Directors of a company with its stakeholders. The Board's Report should, so far as is material for the appreciation of the state of the company's affairs by its members, deal with any changes which have occurred during the financial year. The Board's Report should cover wide spectrum of information that stakeholders need, in addition to financial data, to understand fully the prospects of the company's business and the quality of the management.

Generally, information relating to finances raised during the year, utilization of funds for the purpose for which it was raised, repayment of public deposits, liability for unclaimed deposits and long term agreements including with employees which have substantial financial impact are included in the Board's Report. The Report should also contain the information and explanations on every reservation, qualification or adverse remarks contained in the auditor's report.

The Board's Report of a listed company should include a statement on compliance of corporate governance norms within the company and also a report covering management discussion and analysis (MDAR).

Certain additional disclosures are also required to be made in Board's Report under various other enactments.

This Standard seeks to lay down practices pertaining to the preparation and presentation of the Board's Report.

FEMA, Rules

&

Regulations – A Snap shot

FEMA, 1999 –

A Snapshot on Rules & Regulations

Chapter No.	**Section under FEMA, 1999**	**Applicability of relevant FEMA Rules, Regulations, Order, 2000**	**Latest Clarification/ Notifications under the Act, 1999**	**Gist of the Rules, Regulations, Order**
I	Section 1 (3) (Application of the Act)		Notification No. GSR 371(E) dt 1st May, 2000	The Central Government hereby appoints the 1st day of June, 2000 as the date on which the said Act shall come into force.
II	Section 2 (Definitions)			
	Adjudicating Authority – 2(a) read with section 16(1) (4) (5) & (6)	Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000	GSR 382(E) dt 3rd May, 2000 & GSR 535 (E) dt 1st June, 2000	These authorities can adjudicate the defaults after following the due process of an inquiry under section 13.
	Appellate Tribunal 2(b)	Foreign Exchange Management (Removal of Difficulties) Order, 2000	SO 530(E), dt 1st June, 2000	The Central Government has announced that until a Chairperson and Members are appointed, the CG shall appoint such persons as it may deem fit on ad-hoc basis to discharge of the functions of Chairperson and Members of the App;ellate Tribunal.
	Authorised Person 2(c)		Para 4 of A.D. (M.A. Series) Circular No. 11 dt 16th May, 2000	In terms of provisions of section 10(1), it is declared that all authorized dealers and money changers holding licenses issued by the RBI and functioning as such on 1st May, 2000 are to be deemed authorized persons/dealer and/or as authorized

				money changers.
	Capital account transactions 2(e)	Foreign Exchange Management (Permissible Capital Account Transactions) Regulations 2000	A.D. (M.A Series) Circular 11 dt 16th may, 2000 Notification No GSR 381(E) dt 3rd May, 2000	Categorisations of transactions were mentioned. Accordingly, one category related to the classes of capital account transactions resident outside India in India and the other relates to the capital account transactions of person resident in India. Separate regulations have been framed for every kind of transaction covered in the schedules and the permissibility or otherwise of the transactions shall be subject to the individual regulations announced by the RBI. For example, investment by a person resident in India in foreign securities is covered by the FEM (Transfer or issue of any foreign security) Regulations 2000.
	Chartered Accountant 2(g)			Certificate issued by a Practising CA in respect of the following : - where gross amount of royalty exceeds US $ 5000 certification to the effect that the amount of royalty is correct and confirmation that appropriate tax has been paid to the Government. - Certification of copies of P/L account and balance-sheets of the selling company for the years preceding the year of sale. - to issue certificate for payment of tech nical know how fee and royalty respectively under foreign technical colloboaration. - in case of transfer of shares of a company registered in India by a non-

				resident to a person resident in India by private arrangement, certification regarding the fair value of shares. - where the shares of the company are not quoted in a stock exchange, certification of the fair value of the shares to be transferred. - Certificate Regarding prepayment of External Commercial Borrowings AP (DIR) Circular No 8 dt 5th August, 2002
	Currency 2(h)	Foreign Exchange Management (Current Account) Transactions, 2000	Notification No FEMA 15/2000/RB dt 3rd May, 2000 GSR 33(E) dt 15th January, 2003	The RB notifies that debits cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability is a currency. Rule 7 of the notification states that nothing contained in rule 5 of the said regulation shall apply to the use of international credit cards for making payment by a person towards meeting expenses while such person is on a visit outside India. 'visit' means both private and official visit.
	Prescribed 2(x)	Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and payment of interest) Rules, 2000		The word 'prescribed' indicates that prescription by the Central Government. The RBI cannot issue regulations for such matters falling within the purview of the CG.

		Foreign Exchange (Authentication of Documents) Rules, 2000 Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 Foreign Exchange Management (Current Account) transactions, 2000 Foreign Exchange Management (Compounding Proceedings) Rules, 2000		
	Repatriate to India 2(y)	Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000		RBI to permit for retention of foreign exchange acquired from business or trade or services or honorarium, gifts, inheritance or any other legitimate means up to such limits as may be specified.
	Specify 2(zd)	Regulations which are made by the		It is to be noted that wherever the word specify has been used in the Act, 1999, such specification has to

		RBI.		come in the form of Regulations from RBI. Wherever the word 'prescribed; has been used, such rules can only be made by the Central Government.
III	Section 3 (Dealings in foreign exchange etc)		Notification No. FEMA/16/RB- dt 3rd May, 2000 Notification No. FEMA/17/RB- dt 3rd May, 2000 Notification No. FEMA/18/RB- dt 3rd May, 2000 Notification No. FEMA/29/RB- dt 3rd May, 2000 Notification No. FEMA/39/RB- dt 3rd May,	Foreign exchange so received to be deposited by way of sale to either an authorized dealer or money changer within 7 days of the receipt. Prohibition under section 3 (b) (c) and (d) of the FEMA, 1999 shall not apply to transactions in Indian rupees with residents of Nepal or Bhutan. RBI has given permission to any person to buy foreign exchange from any post office in the form of postal/money orders. Allows Indian company to make payment in rupees to its non-whole time director.

			2000	
	Section 4 (Holding of foreign exchange)	Foreign Exchange Management (Foreign Currency Account by a person Resident in India) (3rd Amendment) Regulations 2003	Notification No FEMA/90/RB- dt 23rd May, 2003 AP (DIR) Series Circular No 87 dt 20th March 2003	To include Gift from a close relative Earnings through export of goods/services or as royalty, honorarium, Disinvestment proceeds received on conversion of shares held to ADR's/GDR's.
	Section 5 Current Account Transactions	Foreign Exchange Management (Current Account Transactions) Rules, 2000 (The complete list of Regulations falling under this category is given separately)	RBI/2009 - 10/465 A. P. (DIR Series) Circular No. 52, dt: 13th May 2010 (Vide Notification No.G.S.R.382 (E) dated May 5, 2010)	AD Category-I banks may permit drawal of foreign exchange by persons for payment of royalty and lump-sum payment under technical collaboration agreements without the approval of Ministry of Commerce and Industry, Government of India. These rules specify the categorization of current account transactions. Students are advised to refer the study material. i.e. permitted, prohibited and restricted transactions)
	Section 6 Capital Account Transactions	Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000	Notification No. FEMA 1 /2000-RB dated 3rd May 2000	Students are advised to refer to the said Table for better understanding.

		(The complete list of Regulations falling under this category is given separately)		
	Section 7 - Export of Goods and Services read with section 18 (1)	Foreign Exchange Management (Export of Goods and Services), Regulations, 2000		Particulars regarding the full value of the goods exported, expected to be realized, in case not realizable, steps taken in this regard and a declaration to the effect.
	Section 8 (Realisation and repatriation of foreign exchange)	Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000	Notification No. FEMA. 169 /2007-RB Date October 23, 2007 - Published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) dated 14.11.2007 - G.S.R.No.715 (E)	Period for surrender of received/realised/unspent/unused foreign exchange by Resident individuals.- A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.
	Section 9 (Exemption from	Foreign Exchange Management		Possession of foreign currency and coins by any person up to US $ 2000.

	realization and repatriation in certain cases)	(Possession and Retention of Foreign Currency) Regulations, 2000. Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2000.		Foreign exchange acquired from employment, vocation, services, gifts, inheritance or any other legitimate means, Foreign current account held or operated by such person or class of persons and limit specified by the RBI. The above categories are exempted from the requirements of section 4 & 8.
	Section 10 (Authorised Person)		AP (DIR) Series) Circular No 43 dt 13th November, 2002 FEMA/16/RB-2000 dt 3td May, 2000 FEMA/17/RB-2000 dt 3td May, 2000 FEMA/18/RB-20000 dt 3rd May, 2000	These notifications relate to receipt form and payment to a person resident outside India, relaxations in respect of prohibitions imposed by section 3(b) & (c) and permission to buy from any Post Office any foreign exchange in the form of Postal Orders or Money orders.
	Section 11 - RBI's powers to issue	Foreign Exchange Management	RBI/2010-11/147 A.P. (DIR	These relate to Guidelines on trading of Currency Options on Recognized Stock / New

	directions to authorized persons	(Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000	Series) Circular No. 05 July 30, 2010	Exchanges
V	Section 16 (Appointment of Adjudicating Authority)	Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000	Notification No 20/2000 dt 26th December, 2000	Declaration for the limited purpose of export, import or holding of currency or currency noptes to be furnished to the specificied authority, namely, Commissioner of Customs and Central Excise/Addl. Commissioner.
	Section 17 (Appeal to Special Director (Appeals)	Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000	No.12/20002-AD.IC (F. No3/2/2000-AD.IC)	As per rule 5, placed in Division 4, the appeal shall be filed in Form I in triplicate and accompanied by 3 copies of the order appealed against.
	Section 18 (Establishment of Appellate Tribunal)		No. 531(E) dt 1st June, 2000	Appellate Tribunal established with the office at Appellate Tribunal for Foreign Exchange, 4th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi 110001.
	Section 20 (Composition of Appellate Tribunal)		Notificaion Nos. SO 320(E) dt 4th April, 2001 and SO 472 (E) dt. 30th April, 2002	It is provided that Division Bench shall hear only such cases which in the opinion of the Chairperson or Member involves substantial question of law and fact which ought to be decided by the Division bench.

	Section 37 (Power of search, seizure, etc)	Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000		According to the regulation where an investigation is being made under this section, in the course of search, any draft, cheque, etc is found, the officer taking up such search shall send such instrument to the RBI or the authorized person.
	Section 38 (Empowering other officers)		Notification No 21/2000 dt 26th December, 2000	Officers of the Customs and Central Excise not below the rank of Deputy Commissioner and Officers of the directorate General of Revenue Intelligence not below the rank of Deputy Director have been authorised to exercise the powers under the Act for the contravention referred to in section 6(3)(g) (export, import or holding of currency and section 7(1)(a) (failure to furnish declaration containing true particulars at the time of export) of the Act.
	Section 39 (precession as to documents in curtains cases	Foreign exchange (authentication of documents) rules , 2000		It is stated in Rule 2 that any document received from any place outside India with a affixation, impression or submission of the seal and signature of person authorized by section 3 of the Diplomatic and Consular (Oaths and Fees) Act, 1948 to do notarial acts shall be deemed to be duly authenticated for the purpose of section 39 of the Act. Such a document shall be admissible in evidence and shall not be rebutted, unless the contrary is proved.

List of Rules Framed By The Central Government Under FEMA, 1999

Sr. No.	*G.S.R. No. and Date*	*Section No. of the Act*	*Title of the Rules*
1.	371(E) dt. 1st May, 2000	1	Commencement date of the Act
2.	379(E) dt. 3rd May, 2000	46	Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and payment of Interest) Rules,2000
3.	380(E)dt.3rd May,2000	46& 39	Foreign Exchange (Authentication of Documents) Rules, 2000
4.	381(E)dt.3rd May, 2000	5 & 46	Foreign Exchange Management (Current Account Transactions) Amendment) rules, 2001
5.	301(E) dt. 30th March, 2001	5 & 46	Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2001
6.	382(E) dt. 3rd May 2000	16,17 & 19	Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000
7.	383(E) dt. 3rd May, 2000	15 & 46	Foreign Exchange (Compounding Proceedings) Rules, 2000
8.	535(E) dt.1st June 2000	16	Appointment of Adjudicating Authorities and their jurisdiction
9.	Notification 12/2002-AD.IC dt. 27th Feb 2002	17	Appointment of special Directors (Appeals)
10	SO.531(E) dt. 1st June, 2000	18	Appellate Tribunal for foreign exchange.
11	SO.537(E)dt. June 2000	19	Authority for deposit of penalty
12	SO 530(E) dt.1st June, 2000	20	Appointment or chairperson & members of appellate tribunal
13.	33(E) dt. 15th Jan. 2003	5 & 46	Foreign Exchange management

			(Current Account Transactions) Rules, 2003
14.	SO 534(E) dt. 1st June, 2000	Sec 36(1)	Appointment of officers of enforcement
15.	SO536(E) dt. 1st June, 2000	Sec 36(2)	Delegation of power for Appointment of officers of enforcement
16.	SO308(E) dt. 20th March 2000	Sec 49(3) & Sec 49(4)	Penalty/Appointment and Powers of Officers of Enforcement-Notified officers of Enforcement
17.	SO 395(E) dt. 31st March, 2003	Sec 49(3) & Sec 49(4)	Penalty/Entrustment of functional of director or other officers of Enforcement-Notified adjudicating officers.
18.	GSR 397(E) dt. 1st May 2003	5 & 46	FEM (Current Account Transaction) (Second Amendment), Rule, 2003
19	GSR 831 (E) dt. 17th Dec 2002	5 & 46	Foreign Exchange Management (Current Account Transactions) (Second Amendment) rules, 2002

Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000

Notification No.FEMA 1 /2000-RB dated 3rd May 2000

RESERVE BANK OF INDIA

(EXCHANGE CONTROL DEPARTMENT)

CENTRAL OFFICE

MUMBAI 400 001

In exercise of the powers conferred by sub-section (2) of Section 6, sub-section (2) of Section 47 of the Foreign Exchange Management Act 1999 (42 of 1999), the Reserve Bank of India makes, in consultation with the Central Government, following regulations relating to capital account transactions, namely :

1. Short title and commencement :-

(i) These Regulations may be called the 'Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000'.

(ii) They shall come into force on the 1st day of June, 2000.

2. Definitions :-

In these Regulations, unless the context requires otherwise, -

(a) 'Act' means, the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) 'Drawal ' means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM card or any other thing by whatever name called which has the effect of creating foreign exchange liability.

(c) 'Schedule' means a schedule to these Regulations;

(d) 'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole;

(e) The words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Permissible Capital Account Transactions :-

(1) Capital account transactions of a person may be classified under the following

heads, namely :-

(A) transactions, specified in Schedule I, of a person resident In India;

(B) transactions, specified in Schedule II, of a person resident outside India.

(2) Subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules;

Provided that the transaction is within the limit , if any, specified in the regulations relevant to the transaction.

4. Prohibition :-

Save as otherwise provided in the Act, rules or regulations made thereunder,

a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,

b) no person resident outside India shall make investment in India , in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -

(i) in the business of chit fund, or

(ii) as Nidhi Company , or

(iii) in agricultural or plantation activities or

(iv) in real estate business, or construction of farm houses or

(v) in trading in Transferable Development Rights (TDRs).

Explanation:

For the purpose of this regulation, 'real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges.

5. Method of payment for investment :-

The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.

6. Declaration to be furnished :-

Every person selling or drawing foreign exchange to or from an authorised person for a capital account transaction shall furnish to the Reserve Bank , a declaration in the form and within the time specified in the regulations relevant to the transaction.

(JAGDISH CAPOOR)

Deputy Governor

Published in the Official Gazette of Government
of India - Extraordinary - Part-II, Section 3,
Sub-Section (i) dated 05.05.2000 - G.S.R.No.384(E)

Schedule I

[See Regulation 3 (1) (A)]

Classes of capital account transactions of Persons resident in India

a) Investment by a person resident in India in foreign securities

b) Foreign currency loans raised in India and abroad by a person resident in India

c) Transfer of immovable property outside India by a person resident in India

d) Guarantees issued by a person resident in India in favour of a person resident outside India

e) Export, import and holding of currency/currency notes

f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India

g) Maintenance of foreign currency accounts in India and outside India by a person resident in India

h) Taking out of insurance policy by a person resident in India from an insurance company outside India

i) Loans and overdrafts by a person resident in India to a person resident outside India

j) Remittance outside India of capital assets of a person resident in India

k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Schedule II

[See Regulation 3 (1) (B)]

Classes of capital account transactions of persons resident outside India

a) Investment in India by a person resident outside India, that is to say,

   i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and

   ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.

b) Acquisition and transfer of immovable property in India by a person resident outside India.

c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.

d) Import and export of currency/currency notes into/from India by a person resident outside India.

e) Deposits between a person resident in India and a person resident outside India.

f) Foreign currency accounts in India of a person resident outside India.

g) Remittance outside India of capital assets in India of a person resident outside India.

Current account transactions

Schedule I

Transactions which are Prohibited (see rule 3)

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

Schedule II

Transactions which require prior approval of the Central Government

(see Rule 4) **Purpose of Remittance**	**Ministry / Department of Govt. of India whose approval is required**
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings	Ministry of Finance, (Department of Economic Affairs)
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)

4. Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
8. Remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million	Ministry of Commerce and Industry
9. Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
10. Omitted	
11. Remittance for membership of P&I Club	Ministry of Finance (Insurance Division)

Schedule III

(See Rule 5)

1. Omitted
2. Release of exchange exceeding USD 10,000 or its equivalent in one calendar year, for one or more private visits to any country (except Nepal and Bhutan).
3. Gift remittance exceeding USD 5,000 per remitter/donor per annum.
4. Donation exceeding USD 5000 per remitter/donor per annum.
5. Exchange facilities exceeding USD 100,000 for persons going abroad for employment.

6. Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country of emigration.

7. Remittance for maintenance of close relatives abroad,

   i. exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and –

      (a) is a citizen of a foreign State other than Pakistan; or

      (b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.

   ii. exceeding USD 100,000 per year, per recipient, in all other cases.

   Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment; the duration of which does not exceed three years, is a resident but not permanently resident.

8. Release of foreign exchange, exceeding USD 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.

9. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.

10. Release of exchange for studies abroad exceeding the estimate from the institution abroad or USD 100,000, per academic year, whichever is higher.

11. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.

12. Omitted

13. Omitted

14. Omitted

15. Remittance exceeding USD 1,000,000 per project, for any consultancy service procured from outside India.

16. Omitted

17. *Remittance exceeding USD 100,000 by an entity in India by way of reimbursement of pre-incorporation expenses.

18. Omitted

Foreign Investments in India

Foreign Investments in India(As on April 1, 2007)

The FAQs cover broadly the following areas :

I. Foreign Direct Investment

II. Foreign Technical Collaboration

III. Foreign Portfolio Investment

IV. Investment in Government Securities and Corporate debt

V. Foreign Venture Capital Investment

VI. Procedure for opening Branch/Project/Liaison Office

<u>I - Foreign Direct Investment</u>

1. **What are the forms in which business can be conducted by a foreign company in India?**

   - A foreign company planning to set up business operations in India has the following options:
   - As an incorporated entity by incorporating a company under the Companies Act, 1956 through
     - Joint Ventures; or
     - Wholly Owned Subsidiaries
   - As an office of a foreign entity through
     - Liaison Office / Representative Office
     - Project Office
     - Branch Office

   Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or other place of business) Regulations, 2000.

2. How does a foreign company invest in India? What are the regulations pertaining to issue of shares by Indian companies to foreign collaborators/investors?

   <u>Automatic Route</u>

   - FDI up to 100% is allowed under the automatic route in all activities/sectors except the following which require prior approval of the Government:

     i) where provisions of Press Note 1 (2005 Series) issued by the Government of India are attracted.

ii) where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the Small Scale sector.

iii) FDI in sectors/activities to the extent permitted under Automatic Route does not require any prior approval either by the Government or the Reserve Bank of India.

iv) The investors are only required to notify the Regional Office concerned of the Reserve Bank of India within 30 days of receipt of inward remittances and file the required documents along with form FC-GPR with that Office within 30 days of issue of shares to the non-resident investors

<u>Government Route</u>

- FDI in activities not covered under the automatic route requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB), Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from http://www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

<u>General permission of RBI under FEMA</u>

- Indian companies having foreign investment approval through FIPB route do not require any further clearance from the Reserve Bank of India for receiving inward remittance and issue of shares to the non-resident investors. The companies are required to notify the concerned Regional Office of the Reserve Bank of India of receipt of inward remittances within 30 days of such receipt and submit form FC-GPR within 30 days of issue of shares to the non-resident investors.

3. Which are the sectors where FDI is not allowed in India, under the Automatic Route as well as Government Route?

FDI is prohibited under Government as well as Automatic Route for the following sectors:

i) Retail Trading (except single brand product retailing)

ii) Atomic Energy

iii) Lottery Business

iv) Gambling and Betting

v) Business of Chit Fund

vi) Nidhi Company

vii) Agricultural or plantation activities (cf Notification No. FEMA 94/2003-RB dated June 18, 2003

viii) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified in Notification No. FEMA 136/2005-RB dated July 19, 2005)

ix) Trading in Transferable Development Rights (TDRs).

4. What should be done after investment is made under the Automatic Route or with Government approval?

A two-stage reporting procedure has been introduced for this purpose.

- On receipt of money for investment:
- Within 30 days of receipt of money from the non-resident investor, the Indian company will report to the Regional Office of the Reserve Bank of India, under whose jurisdiction its Registered Office is located, containing details such as:
- Name and address of the foreign investor/s
- Date of receipt of funds and their rupee equivalent
- Name and address of the authorised dealer through whom the funds have been received, and
- Details of the Government approval, if any.

Upon issue of shares to non-resident investors:

- Within 30 days from the date of issue of shares, a report in Form FC-GPR, PART A together with the following documents should be filed with the concerned Regional Office of the Reserve Bank of India.
- Certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that;
- The company has complied with the procedure for issue of shares as laid down under the FDI scheme as indicated in the Notification No. FEMA 20/2000-RB dated 3rd May 2000 as amended from time to time
- The proposal is within the sectoral policy / cap permissible under the automatic route of RBI and it fulfills all the conditions laid down for investments under the Automatic approval route namely

  a) Non-resident entity/ies (other than individuals) to whom it has issued shares does / do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field.

  b) The company is not investing in an SSI unit & the investment limit of 24 % has been observed/ requisite approvals have been obtained.

  c) Shares have been issued on rights basis and the shares are issued to non-residents at a price that is not lower than that at which shares are/were issued to residents.

OR

d) Shares issued are bonus shares.

OR

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

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

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.

5. What are the guidelines for transfer of existing shares from non-residents to residents or residents to non-residents? Transfer from Non-Resident to Resident:

The term 'transfer' is defined under FEMA as including "sale, purchase, acquisition, mortgage, pledge, gift, loan or any other form of transfer of right, possession or lien". {Section 2 (ze) of FEMA, 1999}.

The FEMA Regulations give specific permission covering the following forms of transfer i.e. transfer by way of sale and gift. These permissions are discussed below:

A: Transfer by way of sale:

A person resident outside India can freely transfer share/convertible debenture by way of sale to a person resident in India as under:

- Any person resident outside India (other than NRIs/OCBs) can transfer by way of sale the shares/convertible debentures to any person resident outside India; subject to the condition that the acquirer or transferee does not have any previous venture or tie up in India in the same field or sector.
- A non-resident Indian (NRI) or an erstwhile Overseas Corporate Body may transfer by way of sale, the shares/convertible debentures held by him to another NRI only.
- Any person resident outside India may sell share/convertible debenture acquired in accordance with FEMA Regulations, on a recognized Stock Exchange in India through a registered broker.

B: Transfer by way of Gift:

A person resident outside India can freely transfer share/convertible debenture by way of gift to a person resident in India as under:

- Any person resident outside India, (not being a non-resident Indian or an erstwhile overseas corporate body), can transfer **by way of gift** the shares/convertible debentures to any person resident outside India; subject to the condition that the acquirer or transferee does not have any previous venture or tie up in India in the same field or sector.

- A non-resident Indian (NRI) may transfer by way of gift, the shares/convertible debentures held by him to another NRI only.
- Any person resident outside India may transfer share/convertible debenture to a person resident in India by way of gift.

<u>Transfer from Resident to Non-Resident:</u>

A: Transfer by way of sale - General Permission under Regulation 10 of Notification No. FEMA 20/2000-RB dated May 3, 2000.

- A person resident in India may transfer to a person resident outside India any share/convertible debenture of an Indian Company whose activities fall under the Automatic Route for FDI subject to the Sectoral Limits, by way of sale subject to complying with pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank of India, from time to time.

This general permission is not available where:

- Indian Company whose shares or convertible debentures are proposed to be transferred is in financial service sector (financial services sector means service rendered by banking and non-banking companies regulated by the Reserve Bank, insurance companies regulated by Insurance Regulatory and Development Authority (IRDA) and other companies regulated by any other financial regulator, as the case may be).
- The transfer falls within the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

B: Transfer by way of gift:

- A person resident in India can transfer by way of gift shares to a person resident outside India in the following ways:
- A person resident in India who proposes to transfer to a person resident outside India [other than erstwhile OCBs] any security, **by way of gift**, shall make an application to the Central Office of the Foreign Exchange Department, Reserve Bank of India furnishing the following information, namely:
- Name and address of the transferor and the proposed transferee
- Relationship between the transferor and the proposed transferee
- Reasons for making the gift. The gifts are permissible up to a limit of:
  - (i) 5% of the paid up capital of the company per donee, and
  - (ii) Amount does not exceed USD 25,000 per calendar year for each donor. The valuation of these shares shall be in accordance with pricing guidelines prescribed.

6. What if the transfer from resident to non-resident does not fall under the above facility?

In case the transfer does not fit into any of the above, either the transferor (resident) or the transferee (non-resident) can make an application for the Reserve Bank's permission for the transfer. The application has to be accompanied with the following documents:

- A copy of FIPB approval (if required).
- Consent letter from transferor and transferee clearly indicating the number of shares, name of the investee Company and the price at which the transfer is proposed to be effected.
- The present/post transfer shareholding pattern of the Indian investee company showing the equity participation by residents and non-residents category-wise.
- Copies of the Reserve Bank of India's approvals/acknowledged copies of FC-GPR evidencing the existing holdings of the non-residents.
- If the sellers/transferors are NRIs / OCBs, the copies of the Reserve Bank of India's approvals evidencing the shares held by them on repatriation / non-repatriation basis.
- Open Offer document filed with SEBI if the acquisition of shares by non-resident is under SEBI Takeover Regulations.
- Fair Valuation Certificate from Chartered Accountant indicating the value of shares as per the following guideline.
- In the case of unlisted shares the fair value is worked out as per the erstwhile Controller of Capital Issue/s.
- For listed shares, the price worked out is not less than the higher of average weekly high and low quotations for 6 months and average of daily high and low quotation or two weeks preceding 30 days prior to the date of making application to FIPB.

7. Are the investments and profits earned in India repatriable?

- All foreign investments are freely repatriable except for the cases where NRIs choose to invest specifically under non-repatriable schemes. Dividends declared on foreign investments can be remitted freely through an Authorised Dealer.

8. What are the guidelines on issue and valuation of shares in case of existing companies?

- Allotment of shares on preferential basis shall be as per the requirements of the Companies Act, 1956, which will require special resolution in case of a public limited company.

- In case of listed companies, valuation shall be as per the Reserve Bank of India /SEBI guidelines as follows:
- The issue price shall be either at:
    - 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 or
    - ii) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date.
- In case of unlisted companies, valuation shall be done in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

9. What are the regulations pertaining to issue of ADRs/GDRs by Indian companies?

- Indian companies are allowed to raise capital in the international market through the issue of ADRs/GDRs. They can issue ADRs/GDRs without obtaining prior approval from RBI if it is eligible to issue ADRs/GDRs in terms of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and subsequent guidelines issued by Ministry of Finance, Government of India.
- After the issue of ADRs/GDRs, the company has to file a return in the proforma given in Annexure 'C' to the RBI Notification No.FEMA.20/ 2000-RB dated May 3, 2000. The company is also required to file a quarterly return in a form specified in Annexure 'D' of the same regulations.
- There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.

10. What is meant by Sponsored ADR & Two-way fungibility Scheme of ADR/GDR?

- **Sponsored ADR/GDR**: An Indian company may sponsor an issue of ADR/GDR with an overseas depository against shares held by its shareholders at a price to be determined by the Lead Manager. The Operative guidelines for the same have been issued vide A.P. (DIR Series) Circular No.52 dated November 23, 2002.
- **Two-way fungibility Scheme:** Under the limited Two-way fungibility Scheme, a registered broker in India can purchase shares of an Indian company on behalf of a person resident outside India for the purpose of converting the shares so purchased into ADRs/GDRs. The operative guidelines for the same have been issued vide A.P. (DIR Series) Circular No.21 dated February 13, 2002. The Scheme provides for purchase and re-conversion of only as many shares into ADRs/GDRs which are equal to or less than the number of shares emerging on surrender of ADRs/GDRs which have been actually sold in the market. Thus, it is only a limited two-way fungibility wherein the headroom available for fresh purchase of shares from

domestic market is restricted to the number of converted shares sold in the domestic market by non-resident investors. So long ADRs/GDRs are quoted at discounts to the value of shares in domestic market, an investor will gain by converting the ADRs/GDRs into underlying shares and selling them in the domestic market. In case of ADRs/GDRs being quoted at premium, there will be demand for reverse fungibility, i.e. purchase of shares in domestic market for re-conversion into ADRs/GDRs. The scheme is operationalised through the Custodians of securities and stockbrokers under SEBI.

11. Can Indian companies issue Foreign Currency Convertible Bonds (FCCBs)?

- FCCBs can be issued by Indian companies in the overseas market in accordance with Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.
- The FCCB issue needs to conform to External Commercial Borrowing guidelines, issued by RBI vide Notification No. FEMA 3/2000-RB dated May 3, 2000 as amended from time to time.

12. Can I invest through Preference Shares? What are the regulations applicable in case of such investments?

- Foreign investment through preference shares is treated as foreign direct investment. Foreign investment in preference share is considered as part of share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap.
- Preference shares to be treated as foreign direct equity for purpose of sectoral caps on foreign equity, where such caps are prescribed, provided they carry a conversion option. If the preference shares are structured without such conversion option, they would fall outside the foreign direct equity cap.

13. Can shares be issued against Lumpsum Fee, Royalty and ECB?

- Issue of equity shares against lump sum fee, royalty and external commercial borrowings (ECBs) in convertible foreign currency are permitted, subject to meeting all applicable tax liabilities and sector specific guidelines.

14. Other than issue of shares under Automatic /Government Route, what other general permissions are available under RBI Notification No.FEMA 20 dt.3-5-2000?

- Issue of shares under ESOP by Indian companies to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India directly or through a Trust up to 5% of the paid up capital of the company.
- Issue and acquisition of shares by non-residents after merger or de-merger or amalgamation of Indian companies.

- Issue shares or preference shares or convertible debentures on rights basis by an Indian company to a person resident outside India.

15. Can I invest in unlisted shares issued by a company in India?

Yes. As per the regulations/guidelines issued by the Reserve Bank of India/Government of India, investment can be made in unlisted shares of Indian companies.

16. Can a foreigner set up a partnership/proprietorship concern in India?

No. Only NRIs/PIOs are allowed to set up partnership/proprietorship concerns in India. Even for NRIs/PIOs investment is allowed only on non-repatriation basis.

17. Can I invest in Rights shares issued by an Indian company at a discount?

There are no restrictions under FEMA for investment in Rights shares at a discount, provided the rights shares so issued are being offered at the same price to residents and non-residents.

II - Foreign Technical Collaboration

1. **What are the payment parameters for foreign technology transfer under the Automatic Route of Reserve Bank of India? How should royalty be calculated?**

- Payment for foreign technology collaboration by Indian companies are allowed under the automatic route subject to the following limits:
- Lump sum payments not exceeding US$ 2 million.
- Royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, without any restriction on the duration of the royalty payments.
- The royalty limits are net of taxes and are calculated according to standard conditions.
- The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, custom duties, etc.
- RBI has delegated the powers to ADs to make payment of royalty under such agreements. The requirement of registration of the agreement with the Regional Office of Reserve Bank of India has been done away with.

2. What should be done, if Automatic Route of Reserve Bank of India for technology transfer is not available?

- Proposals, which do not satisfy the parameters prescribed for automatic route of RBI, require clearance from Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

III – Foreign Portfolio Investment

1. What are the regulations regarding Portfolio Investments by Foreign Institutional Investors (FIIs)?

- Investment by FIIs is regulated under SEBI (FII) Regulations, 1995 and Regulation 5(2) of FEMA Notification No.20 dated May 3, 2000. FIIs include Asset Management Companies, Pension Funds, Mutual Funds, and Investment Trusts as Nominee Companies, Incorporated / Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.
- SEBI acts as the nodal point in the registration of FIIs. The Reserve Bank of India has granted General Permission to SEBI Registered FIIs to invest in India under the Portfolio Investment Scheme (PIS).
- Investment by individual FIIs cannot exceed 10% of paid up capital. Investment by foreign registered as sub accounts of FII cannot exceed 5% of paid up capital. All FIIs and their sub-accounts taken together cannot acquire more than 24% of the paid up capital of an Indian Company. An Indian Company can raise the 24% ceiling to the Sectoral Cap / Statutory Ceiling, as applicable, by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by their General Body.

2. What are the regulations regarding Portfolio Investments by NRIs/PIOs

- Non Resident Indian (NRIs) and Persons of Indian Origin (PIOs) can purchase/sell shares/convertible debentures of Indian companies on Stock Exchanges under Portfolio Investment Scheme. For this purpose, the NRI/PIO has to apply to a designated branch of a bank, which deals in Portfolio Investment. All sale/purchase transactions are to be routed through the designated branch.
- An NRI or a PIO can purchase shares up to 5% of the paid up capital of an Indian company. All NRIs/PIOs taken together cannot purchase more than 10% of the paid up value of the company. (This limit can be increased by the Indian company to 24% by passing a General Body resolution).
- The sale proceeds of the repatriable investments can be credited to the NRE/NRO etc. accounts of the NRI/PIO whereas the sale proceeds of non-repatriable investment can be credited only to NRO accounts.
- The sale of shares will be subject to payment of applicable taxes.

IV - Investment in Government Securities and Corporate debt

1. Can a Non-resident Indian invest in Government Securities/Treasury bills and Corporate debt?

Under the FEMA Regulations only NRIs and SEBI registered FIIs are permitted to purchase Government Securities/Treasury bills and Corporate debt. The details are as under;

A. A Non-resident Indian can purchase,

(1) i) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;

ii) bonds issued by a public sector undertaking(PSU) in India;

iii) shares in Public Sector Enterprises being disinvested by the Government of India.

(2) They can also invest, on non-repatriation basis, in dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings Certificates on non-repatriation basis. The guidelines for these schemes are framed by the concerned Government agencies.

B. A SEBI registered Foreign Institutional Investor may purchase, on repatriation basis, dated Government securities/treasury bills, non-convertible debentures/bonds issued by an Indian company and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognised stock exchange in India. The FIIs is required to ensure that;

i) the FII allocation of its total investment between equity and debt instruments (including dated Government Securities and Treasury Bills in the Indian capital market) should not exceed the ratio of 70:30

ii) In case the FII is set-up as a 100% debt FII, it can invest the entire corpus in dated Government Securities including Treasury Bills, non-convertible debentures/bonds issued by an Indian company subject to limits, if any, stipulated by SEBI in this regard.

The Investment in Government Securities/Treasury bills and Corporate debt is subject to a ceiling decided in consultation with the Government of India. Investment limit for the FIIs as a group in Government securities currently is USD 3.2 Billion. The limit for investment in Corporate debt is USD 1.5 billion. At present, the FIIs can also invest in Innovative instruments such as Upper Tier-II capital upto a limit of USD 500 million.

V - Foreign Venture Capital Investment

1. What are the regulations for Foreign Venture Capital Investment?

- A SEBI registered Foreign Venture Capital Investor with general permission from the Reserve Bank of India can invest in a Venture Capital Fund or an Indian Venture Capital Undertaking, in the manner and subject to the terms and conditions specified in Schedule 6 of RBI Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time.

VI - Procedure for opening Branch/Project/Liaison Office

1. How can foreign companies open Liaison/Project/Branch office in India?

- Foreign company can set up Liaison/Branch Offices in India after obtaining approval from Reserve Bank of India. Reserve Bank of India has given general permission to foreign companies to establish Project Offices in India subject to certain conditions.

2. What is the procedure to be followed for obtaining Reserve Bank's approval for opening Liaison Office/Representative Office?

- A Liaison office can carry on 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 abroad. 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.
- The companies desirous of opening a liaison office in India may make an application in form FNC-1 along with the documents mentioned therein to Foreign Investment Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai. This form is available at www.rbi.org.in
- 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 in whose jurisdiction the office is set up. Liaison/Representative offices have to file an Activity Certificate on annual basis from a Chartered Accountant to the concerned Regional Office of the Reserve Bank of India , stating that the Liaison Office has undertaken only those activities permitted by Reserve Bank of India .

3. What is the procedure for setting up Project Office?

- Foreign companies are granted projects in India by Indian entities. General Permission has been granted by Reserve Bank of India vide Notification No. FEMA 95/2003-RB dated July 2, 2003 to foreign companies to open Project Office/s in India provided they have secured from an Indian company, a contract to execute a project in India, and
- the project is funded directly by inward remittance from abroad; or
- the project is funded by a bilateral or multilateral International Financing Agency; or
- the project has been cleared by an appropriate authority; or

- 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.
- However, if the above criteria are not met, or if the parent entity is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, such applications have to be forwarded to Central Office of the Foreign Exchange Department of the Reserve Bank at Mumbai for approval.

4. What is the procedure for setting up Branch office?

- Reserve Bank permits companies engaged in manufacturing and trading activities abroad to set up Branch Offices in India for the following purposes:
- To represent the parent company/other foreign companies in various matters in India e.g. acting as buying/selling agents in India
- To conduct research work in the area in which the parent company is engaged
- To undertake export and import activities and trading on wholesale basis
- To promote possible technical and financial collaborations between the Indian companies and overseas companies.
- Rendering professional or consultancy services
- Rendering services in Information technology and development of software in India
- Rendering technical support to the products supplied by the parent/Group companies.
- A branch office is not allowed to carry out manufacturing, processing activities directly/indirectly. A Branch Office is also not allowed to undertake Retail Trading activities of any nature in India. Branch Offices have to submit Activity Certificate from a Chartered Accountant on an annual basis to the Central Office of FED. For annual remittance of profit Branch Office may submit required documents to an authorised dealer.
- Permission for setting up branch offices is granted by the Reserve Bank of India. Reserve Bank of India considers the track record of the Applicant Company, existing trade relations with India, the activity of the company proposing to set up office in India as well as the financial position of the company while scrutinising the application.

Introduction:

The legal framework for administration of foreign exchange transactions in India is provided by the Foreign Exchange Management Act, 1999. Under the Act, freedom has been granted for buying and selling of foreign exchange for undertaking current account transactions. The Government has issued Foreign Exchange Management (Current Account Transactions) Rules,2000 which have been notified vide Notifications GSR. 381(E) dated May 3, 2000, S.O.

301(E) dated March 30, 2001 and GSR.608(E) dated September 13, 2004 as amended from time to time. The last amendment to the G.S.R is vide Notification No., G.S.R. No.412 (E) dated July 11, 2006.

Under the Foreign Exchange Management Act, 1999 (FEMA) [which replaced FERA], which has come into force with effect from June 1, 2000, all transactions involving foreign exchange have been classified either as Capital or Current Account transactions. All transactions undertaken by a resident that do not alter his assets or liabilities outside India are current account transactions. In terms of Section 5 of the FEMA, persons resident in India are free to buy or sell foreign exchange for any current account transaction except for those transactions for which drawal of foreign exchange has been prohibited by Central Government, vide its Notification referred to above. A copy of the Notification is available in the Official Gazette as well as an annexure to our Master Circular on Miscellaneous Remittances available at our website **www.mastercirculars.rbi.org.in**.

These details are available on the Reserve Bank's website as well as with the authorised dealers and regional offices of the Foreign Exchange Department of Reserve Bank. This FAQ attempts to answer all such questions in simple language.

I. Guidelines on Travel Related Matters

1. Who is a resident?

A 'person resident in India' is defined in Section 2(v) of FEMA, 1999 as:

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 - for or on taking up employment outside India, or for carrying on outside India a business or vocation outside India, or 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 – for or on taking up employment in India, or for carrying on in India a business or vocation in India, or for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; any person or body corporate registered or incorporated in India, an office, branch or agency in India owned or controlled by a person resident outside India, an office, branch or agency outside India owned or controlled by a person resident in India;

That is to qualify as a resident the person concerned will have to fulfill the criterion regarding (a) the duration of stay and (b) the purpose of stay.

The term Person Resident Outside India is defined in the Act as a person who is not a person resident in India.

2. From where one can buy foreign exchange?

Foreign exchange can be purchased from any authorised dealer. Besides authorised dealers, full-fledged money changers are also permitted to release exchange for business and private visits.

3. Who is an authorized dealer?

An authorized dealer is normally a bank specifically authorized by the Reserve Bank under Section 10(1) of FEMA,1999, to deal in foreign exchange or foreign securities (List available on www.fedai.org.in).

4. How much exchange is available for a business trip?

Authorized dealers can release foreign exchange up to USD 25,000 for a business trip to any country other than Nepal and Bhutan. Release of foreign exchange exceeding USD 25,000 for a travel abroad (other than Nepal and Bhutan) for business purposes, irrespective of period of stay, requires prior permission from Reserve Bank. Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits.

Incidentally, no release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal and Bhutan.

5. Can one obtain additional foreign exchange for medical treatment outside India?

Authorized dealers may release foreign exchange upto USD 100,000 or its equivalent to resident Indians for medical treatment abroad on self declaration basis of essential details, without insisting on any estimate from a hospital/doctor in India/abroad. A person visiting abroad for medical treatment can obtain foreign exchange exceeding the above limit, provided the request is supported by an estimate from a hospital/doctor in India/abroad. This release of foreign exchange of USD 100,000 is to meet the expenses involved in treatment and it is in addition to the amount of USD 25,000 released for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.

6. How much exchange is available for studies outside India?

Authorized dealers may release foreign exchange for an amount of USD 100,000 per academic year or the estimate received from the institution abroad, whichever is higher. Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA. In addition, they can receive remittances up to USD 100,000 from close relatives (as defined in Section 6 of the Companies Act,1956) from India on self-declaration, towards maintenance, which could include remittances towards their studies also. Educational and other loans availed of by students as resident in India can be allowed to continue. There is no dilution in the existing remittance facilities to students in regard to their academic pursuits.

7. How much foreign exchange can one buy when traveling abroad on private visits to a country outside India?

In connection with private visits abroad, viz., for tourism purposes, etc., foreign exchange up to USD10,000, in any one financial year may be obtained from an authorised dealer on a self-declaration basis. The ceiling of USD10,000 is applicable in aggregate and foreign exchange may be obtained for one or more than one visit provided the aggregate foreign exchange availed of in one financial year does not exceed the prescribed ceiling of USD10,000 {The facility was earlier called B.T.Q or F.T.S.}. This limit of USD10,000 per financial year can be availed of by a person along with foreign exchange for travel abroad for any purpose, including for employment or immigration or studies. However, no foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.

8. How much foreign exchange is available to a person going abroad on employment?

Person going abroad for employment can draw foreign exchange up-to USD100,000 from any authorised dealer in India on the basis of self-declaration.

9. How much foreign exchange is available to a person going abroad on emigration?

Person going abroad on emigration can draw foreign exchange upto USD100,000 on self- declaration basis from an authorized dealer in India. This amount is only to meet the incidental expenses in the country of emigration. No amount of foreign exchange can be remitted outside India to become eligible or for earning points or credits for immigration. All such remittances require prior permission of the Reserve Bank.

10. Is there any category of visit which requires prior approval from the Reserve Bank or Govt. of India?

In case of dance troupes, artistes, etc., who wish to undertake cultural tours abroad, they should obtain prior approval from the Ministry of Human Resources Development, Government of India, New Delhi.

11. How much foreign exchange can be purchased in foreign currency notes while buying exchange for travel abroad?

Travellers are allowed to purchase foreign currency notes/coins only up to USD

2000. Balance amount can be taken in the form of travellers cheque or banker's draft. Exceptions to this are (a) travellers proceeding to Iraq and Libya can draw foreign exchange in the form of foreign currency notes and coins not exceeding USD 5000 or its equivalent; (b) travellers proceeding to the Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States can draw entire foreign exchange in the form of foreign currency notes or coins.

12. Do same Rules apply to persons going for studies abroad?

For the purpose of studies abroad, exchange for maintenance expenses is released in the form of (i) currency notes up to USD 2,000, (ii) the balance foreign exchange may be taken in the form of travellers cheques or bank draft payable overseas.

13. How much in advance one can buy foreign exchange for travel abroad?

The foreign exchange acquired for any purpose has to be used within 180 days of purchase. In case it is not possible to use the foreign exchange within the period of 180 days, it should be surrendered to an authorised **person**.

14. Can one pay by cash full rupee equivalent of foreign exchange being purchased for travel abroad ?

Foreign exchange for travel abroad can be purchased from authorized **person** against rupee payment in cash up to Rs.50,000/-. However, if the rupee equivalent exceeds Rs.50,000/-, the entire payment should be made by way of a crossed cheque/banker's cheque/pay order/demand draft only.

15. Is there any time frame for a traveller who has returned to India to surrender foreign exchange?

On return from a foreign trip, travellers are required to surrender unspent foreign exchange held in the form of currency notes and travellers cheques within 180 days of return. However, they are free to retain foreign exchange upto USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their RFC(Domestic) Accounts without any limit.

16. On return to India can one retain foreign exchange?

Residents have the choice of either holding foreign currency up to USD 2,000 or its equivalent or credit the amount to their RFC(Domestic) Accounts provided the foreign exchange was acquired by them:-

a. while on a visit abroad as payment for services not arising from any business in or anything done in India; or

b. as honorarium or gift or for services rendered or in settlement of any lawful obligation from any person who is not resident in India and who is on a visit to India; or

c. as honorarium or gift while on a visit to any place outside India; or

d. from an authorised person for travel abroad and represents the unspent amount thereof.

17 Is one required to surrender foreign coins also to an authorised dealer?

The residents can hold foreign coins without any limit.

18. How much foreign exchange can a resident individual send as gift / donation to a person resident outside India?

Limit of USD 200,000 per **financial** year under the Liberalised Remittance Scheme would also include remittances towards gift and donation by a resident individual. Accordingly, under the Scheme, any resident individual, if he so desires, may remit the entire limit of USD 200,000 in one financial year as gift to a person residing outside India or as donation to a charitable/educational/ religious/cultural organization outside India. Remittances exceeding the limit will require prior permission from the Reserve Bank.

19. How much foreign exchange can residents other than individuals send as gift / donation to a person resident outside India?

ADs have been permitted to make remittances on account of donations by corporates for some specified purposes subject to a limit of one per cent of the foreign exchange earnings during the previous three financial years or USD 5 million, whichever is less. Other residents like partnership firms, trusts etc., are free to remit up to USD 5000 per annum per donor/remitter each as gift and donation. Remittances exceeding the limit will require prior permission from the Reserve Bank.

20. Is one permitted to use International Credit Card (ICC) for undertaking foreign exchange transactions?

Use of the International Credit Cards (ICCs) / ATMs/ Debit Cards can be made for making personal payments like subscription to foreign journals, internet subscription, etc., and for travel abroad in connection with various purposes. The entitlement of foreign exchange on International Credit Cards (ICCs) is limited by the credit limit fixed by the card issuing authority only. With ICCs one can (i) meet expenses/make purchases while abroad (ii) make payments in foreign exchange for purchase of books and other items through internet in India. If the person has a foreign currency account in India or with a bank overseas, he/she can even obtain ICCs of overseas banks and reputed agencies.

Use of these instruments for payment in foreign exchange in Nepal and Bhutan is not permitted.

21. While coming into India how much Indian currency can be brought in?

A person coming into India from abroad can bring in with him Indian currency notes within the limits given below:

a. up to Rs. 5,000 from any country other than Nepal or Bhutan, and

b. any amount in denomination not exceeding Rs.100 from Nepal or Bhutan.

22. While going abroad how much foreign exchange, in cash, can a person carry?

A person is allowed to carry foreign exchange in the form of currency notes/coins up to USD 2,000 or its equivalent only. Balance amount as applicable can be carried in the form of travellers cheque or banker/s draft. (In this connection please see item No.11).

23. While going abroad how much Indian currency, in cash, can a person carry?

Residents are free to take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 5,000/ - per person. They may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation : 'Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

A person can take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100);

24. While coming into India how much foreign exchange can be brought in?

A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000/- or its equivalent and/or the value of foreign currency exceeds USD 5,000/- or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.

25. Is one required to follow complete export procedure when a gift parcel is sent outside India?

A person resident in India is free to send (export) any gift article of value not exceeding Rs. 5,00,000 provided export of that item is not prohibited under the extant Foreign Trade Policy and exporter submits a declaration that goods of gift are not more than Rs. 5,00,000 in value.

26. How much jewellery one can carry while going abroad?

Taking personal jewellery out of India is governed by Baggage Rules framed under Foreign Trade Policy by the Government of India. No approval of Reserve Bank is required in this case.

27. Can a resident extend local hospitality to a non-resident?

A person resident in India is free to make any payment in Indian Rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.

28. Can residents purchase air tickets in India for their travel not touching India?

Residents may book their tickets in India for their visit to any third country. That is, residents can book their tickets for travel, for instance from London to New York, through domestic/foreign airlines in India itself.

29. Can a resident open a foreign currency denominated account in India?

Persons resident in India are permitted to maintain foreign currency accounts in India under the following three Schemes:

a. Exchange Earners Foreign Currency Accounts:-

All categories of resident foreign exchange earners can credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule to Notification No.FEMA.10/2000-RB dated 3rd May, 2000 and as amended from time to time, to their EEFC Account with an authorised dealer in India. Funds held in EEFC account can be utilised for all permissible current account transactions and also for approved capital account transactions as specified by the extant Rules/Regulations/ Notifications/ Directives issued by the Government/RBI from time to time. EEFC account holders can now maintain outstanding balances to the extent of USD 1 million in the form of term deposits up to one year maturing on or before 31st October 2008. The rate of interest will be determined by the banks themselves.

b. Resident Foreign Currency Accounts:-

Returning Indians, i.e., those Indians, who were non-residents earlier, and are returning now for permanent stay in India, are permitted to open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets. Assets held outside India at the time of return can be credited to such accounts. The foreign exchange (i) received or acquired as gift or inheritance from a person referred to sub-section (4) of section 6 of FEMA,1999 or (ii) referred to in clause (c) of section 9 of the Act or acquired as gift or inheritance therefrom or (iii) received as the proceeds of life insurance policy claims/maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority may also be credited to this account.

The funds in RFC account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment outside India.

c. Resident Foreign Currency (Domestic) Account:-

A person resident in India can open, hold and maintain with an authorized dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India. The account may also be credited with/opened out of foreign exchange earned like proceeds of export of goods and/or services, royalty, honorarium, etc., and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels. The account shall be maintained in the form of Current Account and shall not bear any interest. There is no ceiling on the balances in the account.

30. Can a person resident in India hold assets outside India?

In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to 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. (Please also refer to the Liberalised Remittance Scheme of USD 200,000 discussed below).

II. Liberalised Remittance Scheme of USD 200,000.

31. What is the Liberalised Remittance Scheme of USD 200,000?

This is a facility extended to all resident individuals under which, they may freely remit upto USD 200,000 per financial year for any permissible current or capital account transaction or a combination of both.

32. What are the purpose/s for which remittance can be made under the Scheme?

This facility is available for making remittance/s for any permissible current or capital account transaction or a combination of both. It is not available for purposes specifically prohibited (Schedule I) or regulated by the Government of India (Schedule II) of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

33. Who is eligible to avail of this Liberalised Remittance Facility?

The facility is available to resident individuals only.

34. Provide an illustrative list of capital account transactions permitted under the scheme?

The remittance under the Scheme is available to the resident individuals for any permitted current or capital account transactions or a combination of both. Under the Scheme, resident individuals can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India. However, it is clarified that remittance from India for margins or margin calls to overseas exchanges / overseas counterparty are not allowed under the Scheme.

The remittance facility under the Scheme is also not available for the following:

i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery/sweep stakes, tickets, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

ii) Remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan.

iii) Remittances made directly or indirectly to countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" from time to time.

Iv Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

35. Whether this facility is in addition to existing facilities detailed in Schedule III under remittances?

The facility under the Scheme is **in addition** to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes. However, gift and donation remittances cannot be made separately and have to be made under the Scheme only. Accordingly, resident individuals can remit gifts and donations up to USD 200,000 per financial year under the Scheme.

36. Whether resident individuals under this Scheme have to repatriate the accrued yield on deposits/investments abroad, over and above the principal amount?

The investor can retain and reinvest the income earned on investments made under the Scheme. Currently, the residents are not required to repatriate the funds or income generated out of investments made under the Scheme.

37. Whether remittance under the Scheme is on gross basis or net basis (net of repatriation from abroad)?

Remittance under this scheme is on a gross basis.

38. Whether minors can also avail of the remittance facility?

The facility is available to all the resident individuals including minors.

39. Whether remittances under the facility can be consolidated in respect of family members?

Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.

40. Whether the Scheme can be used for purchase of objects of art (paintings, etc.,) either directly or through auction house?

Remittances under the Scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

41. Whether small value remittance of USD 5000/- (gifts, donation, etc.,) is in addition to LRS of USD 200,000?

Remittance against gifts and donations cannot be made separately and have to be made under the Scheme only and therefore, no separate limits for gift and donation are available

42. Whether the AD is required to check permissibility of remittances based on nature of transaction or allow the same based on remitters declaration?

AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by Reserve Bank.

43. Whether under this scheme a customer can remit funds for acquisition of ESOPs?

The Scheme can also be used for remittance of funds for acquisition of ESOPs.

44. Whether the scheme is in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000/- for a block of 5 calendar years)?

The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/GDR.

45. Whether the Scheme is in addition to acquisition of qualification shares (i.e USD 20,000/- or 1% of paid up capital of overseas company whichever is lower)?

The remittance under the Scheme is in addition to acquisition of qualification shares.

46. Whether a resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?

A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc under this Scheme. Further, the resident can invest in such securities out of the bank account opened abroad under the Scheme.

47. Whether an individual, who has availed of a loan abroad while a non-resident can repay the same on return to India, under this Scheme as a resident?

This is permissible.

48. Whether it is mandatory for resident individuals to have PAN number for sending outward remittances under the Scheme?

It is mandatory to have PAN number to make remittances under the Scheme.

49. In case a resident individual requests for an outward remittance by way of issuance of a demand draft (either in his own name or in the name of the beneficiary with whom he intends putting through the permissible transactions) at the time of his private visit abroad, whether against self declaration of the remitter such an outward remittance can be effected?

Such outward remittance in the form of a DD can be effected against the declaration by the resident individual in the format prescribed under the Scheme.

50. Is there any frequency for the remittance?

There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the limit of USD 200,000/-.

51. Can residents avail of this facility for acquiring immovable property and other assets abroad?

Yes. Individuals are free to use this Scheme to acquire and hold immovable property, shares or any other asset outside India without prior approval of Reserve Bank.

52. Can individuals open foreign currency account abroad for making remittance under the Scheme?

Yes. Individuals are free to open, hold and maintain foreign currency accounts with a bank outside India for making remittances under the Scheme without the prior approval of Reserve Bank. The account can be used for putting through any transaction connected with or arising from remittances under the Scheme.

53. What are the requirements to be complied with by the remitter?

The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made.The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. He has to furnish an application-cum-declaration in the specified format regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

54. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

Once a remittance is made for an amount upto USD 200,000 during the financial year, he would not be eligible to make any further remittances under this route, even if the proceeds of the investments have been brought back into the country.

55. Can remittances be made only in US Dollars?

The remittances can be made in any currency equivalent to USD 200,000 in a financial year**.**

56. In the past resident individuals could invest in overseas companies listed on a recognised stock exchange abroad and which has the shareholding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India. Does this condition still exist?

Investment by resident individual in overseas companies is subsumed under the Scheme of USD 200,000. The requirement of 10 per cent reciprocal shareholding in the listed Indian companies by such overseas companies has since been dispensed with.

III. Guidelines for Financial Intermediaries offering special schemes, protection under the Scheme.

57. Are intermediaries expected to seek specific approval for making overseas investments available to clients?

Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

58. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?

No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme of USD 200,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make.

59. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?

No. The Scheme does not envisage extension of credit facility against the security of the deposits.

60. Can bankers open foreign currency accounts in India for residents under the Scheme?

No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

61. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?

No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

RBI – Reaching out to NRIs

Q1. Where can one find regulations/directions issued by Reserve Bank for acquisition and transfer of immovable property in India by a person resident outside India?

Ans. Regulations regarding acquisition and transfer of immovable property in India by a person resident outside India has been notified vide RBI Notification No. FEMA 21/2000-RB dated May 3, 2000 as amended vide Notification No. FEMA 64/2002-RB dated June 29, 2002 and Notification No. FEMA 65/2002-RB dated June 29, 2002 and relevant directions issued in the form of A.P. (DIR Series) Circulars. These are available on RBI website: www.fema.rbi.org.in

Q2. Under the extant foreign exchange regulations to whom is general permission available for purchase immovable property in India?

Ans. General Permission is available to purchase only a residential/commercial property in India to a person resident outside India who is a citizen of India (NRI) and who is a Person of Indian Origin (PIO).

Q3. Who is a Person of Indian Origin (PIO)?

Ans. For the purpose of acquisition and transfer of immovable property in India, a PIO 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 grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Q4. Is NRI/PIO who has purchased residential/commercial property under general permission required to file any documents with Reserve Bank of India?

Ans. NRI/PIO who has purchased residential/commercial property under general permission is not required to file any documents with the RBI.

Q5. Is there any restriction on number of residential/commercial property that NRI/PIO can purchase under the general permission available?

Ans. There is no restriction on number of residential/commercial property that NRI/PIO can purchase under the general permission available.

Q6. Can a name of a foreign national of non-Indian origin be added as a second holder to a residential/commercial property purchased by NRI/PIO?

Ans. No.

Q7. Can a foreign national of non-Indian origin resident outside India acquire any immovable property in India by way of purchase?

Ans. No. Under section 2 (ze) of the Foreign Exchange Management Act, 1999 'transfer' includes among others, 'purchase'. Therefore, a foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of purchase.

Q8. Can a foreign national of non-Indian origin acquire residential property on a lease in India?

Ans. Yes. A Foreign National of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan may acquire only residential accommodation on lease, not exceeding five years for which he/she does not require prior permission of RBI.

Q9. Can a person resident outside India (i.e. a NRI or a PIO or a foreign national of non-Indian origin) acquire agricultural land/plantation property/farm house in India by way of purchase?

Ans. No. A person resident outside India cannot acquire by way of purchase agricultural land/plantation property/farm house in India.

Q10. Can NRI/PIO acquire residential/commercial property by way of gift under the general permission available?

Ans. Yes. Under general permission available NRI/PIO may acquire residential/commercial property by way of gift from a person resident in India or a NRI or a PIO.

Q11. Can a foreign national of non-Indian origin resident outside India acquire residential/commercial in India by way of gift?

Ans. No. Under section 2 (ze) of the Foreign Exchange Management Act, 1999 'transfer' includes among others, 'gift'. Therefore, a foreign national of non-Indian origin resident outside India cannot acquire residential/commercial property in India by way of gift.

Q12. Can a person resident outside India (i.e. a NRI or a PIO or a foreign national of non-Indian origin) acquire agricultural land/plantation property/farm house in India by way of gift?

Ans. No. A person resident outside India cannot acquire agricultural land/plantation property/farm house in India by way of gift.

Q13. Can a person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) hold any immovable property in India acquired by way of inheritance from a person resident in India?

Ans. Yes. A person resident outside India can hold immovable property acquired by way of inheritance from a person resident in India as per the provisions of Section 6(5) of the Foreign Exchange Management Act, 1999.

Q14. Under general permission available to whom can NRI transfer by way of sale his residential/commercial property?

Ans A: NRI can transfer by way of sale residential/commercial property in India to a person resident in India or to a NRI or a PIO.

Q15. Under general permission available to whom can a PIO transfer his residential/commercial property by way of sale?

Ans. PIO can transfer by way of sale residential/commercial property in India only to a person resident in India.

Q16. Can a PIO transfer by way of sale his residential/commercial property to a NRI or a PIO?

Ans No. He would need to seek Reserve Bank prior approval for transfer by way of sale residential/commercial property in India to a NRI or a PIO.

Q17. Can a foreign national of non-Indian origin whether resident in India or outside India transfer by way of sale residential/property in India acquired with the specific permission of Reserve Bank to a person resident in India or outside India?

Ans. No. A foreign national of non-Indian origin whether resident in India or outside India would need to seek prior approval of Reserve Bank for transfer by way of sale residential/property in India acquired with the specific permission of Reserve Bank to a person resident in India or outside India.

Q18. Under general permission available to whom can NRI/PIO transfer by way of sale his agricultural land/plantation property/farm house in India?

Ans. Under the general permission available NRI/PIO may transfer by way of sale his agricultural land/plantation property/farm house in India to a person resident in India who is a citizen of India.

Q19. Can a foreign national of non-Indian origin resident outside India transfer by way of sale agricultural land/plantation property/farm house acquired by him in India?

Ans. A foreign national of non-Indian origin resident outside India would need to seek prior approval of Reserve Bank for transfer, by way of sale, agricultural land/plantation property/farm house acquired in India.

Q20. Are NRIs permitted to maintain accounts in rupees and in foreign currency?

Ans. Yes. Accounts can be maintained by NRIs in rupees as well as in foreign currency. Accounts in foreign currencies can, however, can be maintained with authorities' dealers only.

Q21. What are the different types of rupee accounts permitted to be maintained?

Ans. Three types of accounts viz. Non resident (External) Rupee Accounts (NRE account), Ordinary Non-Resident Rupee Account (NRO A/c) and Non-Resident (Non- repatriable) Rupee Deposit accounts (NRNR) are permitted to be maintained.

Investment Options in India

As India warms up to the economic growth and prevailing real estate boom, NRI Investment in India offers better-than-expected choices as well as opportunities to make high profits. A diversified domestic industrial base, banking infrastructure, and financial services, and real estate growth continue to add to its magnetic charm.

To attract foreign investment in India, Government is offering several facilities to Non Resident Indians (NRIs), Persons of Indian Origin (PIO) and Overseas Corporate Bodies (OCBs). While NRI refers to an Indian citizen who is residing outside India, PIO refers to an individual who at any time held an Indian passport or whose father or grandfather was a citizen of India.

According to the laws, NRIs/PIOs/OCBs/ are permitted to open bank accounts in India out of funds remitted from abroad. The foreign exchange brought in from abroad or out of funds is legitimately due to them in India, with authorized dealer.

The Reserve Bank of India (RBI) has granted general permission to NRIs/PIOs, for undertaking direct investments in Indian companies, under the Automatic Route purchase of shares under

1) Portfolio Investment Scheme,
2) Investment in companies and
3) Proprietorship/partnership concerns on non-repatriation basis
4) For remittances of current income.

   NRIs/PIOs do not have to seek specific permission for approved activities under these schemes.

NRIs/PIOs/OCBs can avail Direct Investment Opportunities:

1) **Automatic Route of RBI (With Repatriation Benefits):** NRIs/OCBs can invest in shares/convertible debentures of Indian companies under the Automatic Route without obtaining Government or RBI permission except for a few sectors where FIPB/SIA permission is necessary, or where the investment can be made only up to a certain percentage of paid up capital.
2) **Investment with Government Approval:** Investments not eligible under the Automatic Route are considered by the Foreign Investment Promotion Board (FIPB) subject to sectoral limits/norms. These investments also enjoy full repatriation benefits.
3) **Other Investments (with Repatriation Benefits):**
   - Investment in Domestic Mutual Funds
   - Investment in Bonds Issued By Public Sector Undertakings
   - Purchase of Shares Of Public Sector Enterprises (By NRIs/PIOs/OCBs)

- Deposits with Companies (For A Minimum Period Of Three Years)
- Investment in Government Securities/Shares

4) Investment Upto 100% Equity (without Repatriation Benefits):

- NRIs can invest by way of capital contribution in any proprietary or partnership concern in India provided the firm or the proprietary concern is not engaged in any agricultural/plantation activities or real estate business or Print Media on non-repatriation basis subject to the certain conditions.
- NRIs/OCBs has been granted general permission to subscribe to:

  a) the shares/convertible debentures of an Indian company on non-repatriation basis,

  b) to an Indian company to issue shares or convertible debentures by way of new/rights/bonus issue to NRIs/OCBs on non-repatriation basis provided that the investee company is not engaged in agricultural/plantation activities or real estate business (excluding real estate development i.e. development of property or construction of houses) or chit fund or is not a Nidhi company.

5) Other Investments (without Repatriation Benefits)

- Investment in Non Convertible Debentures
- Money Market Mutual Funds
- Deposits With Companies
- Commercial Papers (OCBs are presently not permitted)

Investment options in India NRIs have been provided with multitude of investment options in India:

FCNR Accounts:NRIs are permitted to open foreign currency (FCNR) account which can be opened in five major currencies, viz., US Dollar, Pound Sterling, Deutsche Mark, Euro and Japanese Yen. These accounts are opened for periods ranging from 12 months to 3 years. FCNR accounts may be opened with a remittance in the designated currency received from abroad or by conversion of a remittance in any other convertible foreign currency into the designated currency at the risk and cost of the customer. On maturity, payment shall be made in foreign currency/Indian Rupees, as desired by the depositor.

RFC Accounts:NRIs are eligible to maintain Resident Foreign currency (RFC) accounts. These accounts can be held singly or jointly in the names of eligible persons. Such accounts can be maintained in the form of savings bank, current accounts and term deposits.

Term deposit accounts:Term deposits can be opened by remittances from abroad or by transfer of funds from existing NRE/FCNR/NRO/NRSR accounts of the same person with other banks in India or from other branches of the bank or by tendering foreign currency notes/ travelers cheques brought by NRI's during their visit to India.

Non-resident Non-repatriable Rupee Deposit Scheme: These accounts can be opened by way of transfer of funds from abroad or from existing NRE/FCNR accounts. Deposits period ranges from 6 months to 3 years and the deposits are maintained in Indian Rupees only on a non-repatriable basis.

Non-Repatriable Deposit Accounts (NRO): The local funds of an NRI viz, rent, dividend, interest, sale proceeds of securities, property, etc. can be credited to these accounts and balances can also be placed in term deposits. Incomes earned on investments done on non-repatriable basis are to be credited to NRO account. After completion of formalities, eligible amount can be repatriated.

Special term deposit accounts:These are reinvestment deposits. Interest earned on these deposits are added to the principal and compounded at quarterly intervals. The principal amount together with interest is repaid on maturity of the deposit.

Cash certificates: All conditions pertaining to Special Term deposits are applicable for Cash Certificate Deposits.

Thrift Deposit Scheme:It is a recurring deposit scheme where fixed sums are deposited every month for a fixed period. Compound interest is payable at the same rates as applicable to other term deposits. Loan facility is also available.

Unit Deposit:It is a fixed deposit scheme wherein you can withdraw your deposit to the extent of your need and leave the remaining amount undisturbed to earn you interest at the contracted rate.

Apart from these NRIs are permitted to make direct investments in proprietary/partnership concerns in India as also in shares/debentures of Indian companies. They are also permitted to make portfolio investments i.e. purchase of shares/debentures of Indian companies through stock exchanges in India. These facilities are granted both on repatriation and non repatriation basis.

CONSOLIDATED FDI POLICY

(EFFECTIVE FROM APRIL 1, 2010)

Government of India

Ministry of Commerce & Industry

Department of Industrial Policy & Promotion

I N D E X

CHAPTER-6 REMITTANCE, REPORTING AND VIOLATION

CHAPTER 1

INTENT AND OBJECTIVE

1.1 INTENT AND OBJECTIVE

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

1.1.2 International Monetary Fund (IMF) and Organization for Economic Cooperation and Development(OECD) define FDI similarly as a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a 'lasting interest' in an enterprise (the direct investment enterprise) that is resident in an economy other than that of the direct investor. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. Direct investment allows the direct investor to gain access to the direct investment enterprise which it might otherwise be unable to do. The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise. In the Indian context, FDI is defined in Para 2.1.12 of this Circular.

1.1.3 It is the policy of the Government of India to attract and promote productive FDI from non- residents in activities which significantly contribute to industrialization and socio-economic development. FDI supplements the domestic capital and technology.

1.1.4 **The Legal basis:** Foreign Direct Investment by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' and Government of India and Reserve Bank of India regulate this under the FEMA, 1999 and its various regulations. Keeping in view the current requirements, the Government from time to time comes up with new regulations and amendments/changes in the existing ones through order/allied rules, Press Notes, etc. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendment to notification No.FEMA 20/2000-RB dated May 3, 2000. These notifications take effect from the date of issue of Press Notes/ Press

Releases. The procedural instructions are issued by the Reserve Bank of India vide A.P.Dir. (series) Circulars.The regulatory framework over a period of time thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.5 This circular consolidates into one document all the prior policies/regulations on FDI which are contained in FEMA, 1999, RBI Regulations under FEMA, 1999 and Press Notes/Press Releases/Clarifications issued by DIPP and reflects the current 'policy framework' on FDI. It is clarified that this is a consolidation/compilation and comprehensive listing of most matters on FDI and is not intended to make changes in the extant regulations. This Consolidation deals comprehensively with all aspects of FDI Policy which are covered under the various Press Notes/Press Releases/ Clarifications issued by DIPP.

1.1.6 It has been decided that from now onwards a consolidated circular would be issued every six months to update the FDI policy. This consolidated circular will, therefore, be superseded by a circular to be issued on September 30, 2010.

1.1.7 All earlier Press Notes/Press Releases/Clarifications on FDI issued by DIPP which were in force and effective as on March 31, 2010 stand rescinded as on March 31, 2010. The present circular consolidates and subsumes all such/these Press Notes/Press Releases/Clarifications as on March 31, 2010.

1.1.8 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications prior to March 31, 2010 shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

1.1.9 It is the intent and objective of the Government to promote foreign direct investment through a policy framework which is transparent, predictable, simple and clear and reduces regulatory burden. The system of periodic consolidation and updation is introduced as an investor friendly measure. While this circular consolidates FDI Policy Framework, the legal edifice is built on notifications issued by RBI under FEMA. Therefore, any changes notified by RBI from time to time would have to be complied with and where there is a need / scope of interpretation, the relevant FEMA notification will prevail.

1.1.10 This circular will take effect from April 1, 2010.

CHAPTER 2
DEFINITIONS

2.1 DEFINITIONS: The definitions of terms used in this circular are as follows:-

2.1.1 'AD Category-I Bank' means a bank (Scheduled Commercial, State or Urban Cooperative) which are authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.

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

2.1.3 'Authorized Dealer' means a person authorized as an authorized dealer under sub- section (1) of section 10 of FEMA.

2.1.4 'Authorized Person' means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under Sub-section (a) of Section 10 of FEMA to deal in foreign exchange or foreign securities.

2.1.5 'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.

Note: Any other type of instruments like warrants, partly paid shares etc. are not considered as capital and cannot be issued to person resident outside India.

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

2.1.7 A company is considered as "Controlled" by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company.

2.1.8 An entity is considered as 'Controlled' by 'non resident entities', if non-residents have the power to appoint a majority of its directors

2.1.9 'Depository Receipt' (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs).

2.1.10 'Erstwhile Overseas Corporate Body' (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indian and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indian directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

2.1.11 'Foreign Currency Convertible Bonds'(FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

2.1.12 'FDI' means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM(Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.

2.1.13 'FEMA' means the Foreign Exchange Management Act 1999 (42 of 1999).

2.1.14 'FIPB' means the Foreign Investment Promotion Board constituted by the Government of India.

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

2.1.16 'Foreign Venture Capital Investor' (FVCI) means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 {SEBI(FVCI) Regulations} and proposes to make investment in accordance with these Regulations

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

2.1.18 'Holding Company' would have the same meaning as defined in Companies Act 1956.

2.1.19 'Indian Company' means a company incorporated in India under the Companies Act, 1956.

2.1.20 'Indian Venture Capital Undertaking' (IVCU) means an Indian company:—

(i) whose shares are not listed in a recognised stock exchange in India;

(ii) which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.

2.1.21 'Investing Company' means an Indian Company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings/securities.

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

2.1.23 'Joint Venture' (JV) means an Indian entity incorporated in accordance with the laws and regulations in India in whose capital a foreign entity makes an investment.

2.1.24 'Non resident entity' means a 'person resident outside India' as defined under FEMA

2.1.25 'Non Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an individual of Indian origin.category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

2.1.40 'Venture Capital Fund' (VCF) means a Fund established in the form of a Trust, a company including a body corporate and registered under Securities and Exchange board of India (Venture Capital Fund) Regulations, 1996, which

(i) has a dedicated pool of capital;

(ii) raised in the manner specified under the Regulations; and

(iii) invests in accordance with the Regulations

CHAPTER 3

ORIGIN TYPE, ELIGIBILITY, CONDITIONS AND ISSUE/TRANSFER OF INVESTMENT

3.1 ORIGIN OF INVESTMENT IN INDIA

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

3.1.2 NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

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

3.1.4 (i) An FII may invest in the capital of an Indian company either under the FDI Scheme/Policy or the Portfolio Investment Scheme. 10% individual limit and 24% aggregate limit for FII investment would still be applicable even when FIIs invest under the FDI scheme/policy.

(ii) The Indian company which has issued shares to FIIs under the FDI Policy for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical/monitoring purposes.

(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 RBI to monitor the overall ceiling/sectoral cap/statutory ceiling.

3.1.5 No person other than registered FII/NRI as per Schedules II and III of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations of FEMA 1999, can invest/trade in capital of Indian Companies in the Indian Stock Exchanges directly i.e. through brokers like a Person Resident in India.

3.1.6 A Foreign Venture Capital Investor (FVCI) may contribute upto 100% of the capital of a Venture Capital Fund/Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments are allowed under the automatic route subject to SEBI & RBI regulations and FDI Policy. However FVCIs are also allowed to invest as non-resident entities in other companies subject to FDI Policy.

3.2 TYPES OF INSTRUMENTS.

3.2.1 Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations.The pricing of the capital instruments should be decided/determined upfront at the time of issue of the instruments.

3.2.2 Other types of Preference shares/Debentures i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECBs relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of London Interbank Offered Rate (LIBOR) plus the spread as permissible for ECBs of corresponding maturity

3.2.3 The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.

3.2.4 Issue of shares by Indian Companies under FCCB/ADR/GDR

(i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR(ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.

(ii) A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.

(iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. ADRs/ GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilization of the proceeds, the Indian company can invest the funds in:-

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

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

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

(iv) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.

(v) The ADR / GDR proceeds can be utilized for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.

(vi) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank from time to time, as applicable to all shareholders exercising voting rights.

(vii) Erstwhile OCBs who are not eligible to invest in India and entities prohibited from buying, selling or dealing in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.

(viii)The pricing of ADR / GDR issues should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

(ix)The pricing of sponsored ADRs/GDRs would be determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares

(Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

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

(ii) **Sponsored ADR/GDR issue:** An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADRs / GDRs.

3.3 ELIGIBILITY OF FDI IN RESIDENT ENTITIES

3.3.1 FDI in an Indian Company

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

3.3.2 FDI in Partnership Firm / Proprietary Concern:

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

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

(b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.

(c) Amount invested shall not be eligible for repatriation outside India.

(ii) Investments with repatriation benefits**:** NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.

(iii) Investment by non-residents other than NRIs/PIO**:** A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

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

3.3.3 FDI in Trusts: FDI in Trusts other than VCF is not permitted.

3.3.4 FDI in other Entities: FDI in resident entities other than those mentioned above is not permitted.

3.4 CONDITIONS ON ISSUE/TRANSFER OF SHARES

3.4.1 The capital 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 capital 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 would attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

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

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

3.4.4 Transfer of shares and convertible debentures –

(i) Subject to FDI sectoral policy, foreign investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

(a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).

(b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI. In both the above cases, the 'Existing Venture/tie-up condition' as defined in para 4.2.2 would apply.

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

(d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

(e) A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than financial services sectors (i.e. Banks, NBFC, Insurance, ARCs, CICs, infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the guidelines given in.

(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.

(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, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non-Resident/Non-Resident Indian, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, ARCs, CICs, Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).

(h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.

(ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC- TRS.

(iii) **Escrow:** AD Category – I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers / exit offers and delisting of shares. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/ provisions of the Companies Act, 1956 will be applicable.

3.4.5 Prior permission of RBI in certain cases for transfer of capital instruments –

(i) The following instances of transfer of capital instruments from resident to non-residents by way of sale require prior approval of RBI:

(a) Transfer of capital instruments of an Indian company engaged in financial services sector i.e. Banks, NBFCs, Asset Reconstruction Companies, CICs, Insurance companies, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).

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

(c) The activity of the Indian company whose capital instruments are being transferred falls outside the automatic route and the approval of the FIPB has been obtained for the said transfer.

(d) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.

(e) Transfer of capital instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category – I bank for necessary due diligence , within 60 days from the date of receipt of the full and final amount of consideration. The link office of the AD Category-I Bank will consolidate such Form FC-TRS details and report the same to the Central Office of RBI.

(ii) The transfer of capital instruments of companies engaged in sectors falling under the Government Route from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI.

(iii) A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the prescribed documents should be enclosed. Reserve Bank considers the following factors while processing such applications:

(a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

(b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.

(c) The applicable sectoral cap limit in the Indian company is not breached.

(d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time

(e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during the calendar year.

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

3.4.6 Conversion of ECB/Lumpsum Fee/Royalty into Equity.

(i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into shares/preference shares, subject to the following conditions and reporting requirements.

(a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;

(b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;

(c) Pricing of shares is as per SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively;

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

(e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.

(ii) General permission is also available for issue of shares/preference shares against 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.

3.5 ISSUE OF INSTRUMENTS.

3.5.1 Issue of Rights/Bonus Shares – FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus / rights shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The price of shares offered on rights basis by the Indian company to non-resident shareholders shall not be lower than the price at which such shares are offered to resident shareholders.

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

3.5.3 Additional allocation of rights share by residents to non-residents – Existing non- resident shareholders are allowed to apply for issue of additional shares/ fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

3.5.4 Acquisition of shares under Scheme of Merger/Demerger/Amalgamation– Mergers/demergers/ 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/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

(i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and

(ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

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

(i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

(a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and

(b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

(ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.

(iii) The issuing company is required to report the details of such issues to the Regional Office concerned of the Reserve Bank, within 30 days from the date of issue of shares.

CHAPTER 4

CALCULATION, ENTRY ROUTE, CAPS, ENTRY CONDITIONS, ETC. OF INVESTMENT

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

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

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

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

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

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

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

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

Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidy is owned by the holding company.

Illustration

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

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

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

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

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

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

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

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

  (v) **Additional conditions:**

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

    (b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such *inter-se* agreements for determining ownership and control when considering the case for granting approval for foreign investment.

(c) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.

(d) In the I& B and Defence sectors where the sectoral cap is less than 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

(A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following:

(I) In the case of an individual shareholder,

(aa) The individual shareholder,

(bb) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(cc) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(II) In the case of an Indian company,

(aa) The Indian company

(bb) A group of Indian companies under the same management and ownership control.

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

(C) Provided that, in case of a combination of all or any of the entities mentioned in Sub- Clauses (i) and (ii) of clause 4.1.3(v)(d)(1) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

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

4.1.4 The above mentioned policy and the methodology would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statutes or rules there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the Insurance Sector which will continue to be governed by the relevant Regulation.

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

4.2 ENTRY ROUTES FOR INVESTMENT:

4.2.1 Investments can be made by non-residents in the shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through two routes; the Automatic Route and the Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI or Government of India for the investment. Under the Government Route, prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required. Proposals for foreign investment under Government route as laid down in the FDI policy from time to time, are considered by the Foreign Investment Promotion Board (FIPB) in Department of Economic Affairs (DEA), Ministry of Finance.

4.2.2 Investment would be subject to the 'Existing Venture/ tie-up condition' as defined below:

4.2.2.1 With effect from January 12, 2005 the joint venture agreements are expected to include a 'conflict of interest' clause to determine/ safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the same field of economic activity. The policy is, however, expected to protect the interest of the joint venture partner where the agreement had been entered prior to January 12, 2005.

4.2.2.2 Where a foreign investor has an existing joint venture/ technology transfer/ trademark agreement in the same field, prior to January 12, 2005, the proposal for fresh investment/technology transfer/technology collaboration/trademark agreement in a new joint venture for technology transfer/ technology collaboration/trademark agreement would have to be under the Government approval route through FIPB/ Project Approval Board.

The onus to provide requisite justification that the new tie-up would not jeopardize the existing joint venture or technology transfer/ trademark partner, would lie equally on the foreign investor/ technology supplier and the Indian partner.

4.2.2.3 The following investments, however, will be exempt from the requirement of Government approval even though the foreign investor may be having a joint venture or technology transfer/ trademark agreement in the same filed:

(a) Investments to be made by Venture Capital Fund registered with the Securities and Exchange Board of India (SEBI); or

(b) Investments by Multinational Financial Institutions like Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Finance Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG) etc.; or

(c) where in the existing joint venture, investment by either of the parties is less than 3 per cent; or

(d) where the existing joint venture / collaboration is defunct or sick; or

(e) for issue of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer / trade mark agreement of the person to whom the shares are to be issued are also in the Information Technology sector or in the mining sector for same area/mineral.

4.2.2.4 For the purpose of 'same' field 4 digit NIC, 1987 Code will be relevant.

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

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

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

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

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

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

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

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

4.3 CAPS ON INVESTMENTS

4.3.1 Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as provided/permitted in the FDI policy. Thus while investment are prohibited in some sectors/activities, there are restrictions/conditions/caps on the investment in certain other sector/activities. The caps in various sector(s)/activity are detailed out in Chapter 5 of this circular.

4.4 ENTRY CONDITIONS ON INVESTMENT

4.4.1 Investments can be permitted to be made by non-residents in the capital of a resident entity in certain sectors/activity with entry conditions. These entry conditions would be applicable for investment only by non-resident entities. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this circular.

4.5 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS

4.5.1 Besides the entry conditions on foreign investment, the investment/investors need to confirm to all relevant sectoral laws, regulations, rules etc.

4.5.2 The national security/internal security related conditions as contained in relevant statutes will also have to be complied with.

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

4.6 DOWNSTREAM INVESTMENT BY INDIAN COMPANIES

4.6.1 The Policy for downstream investment by Indian companies seeks to lay down and clarify about compliance with the Foreign investment norms on entry route, conditionalities and sectoral caps. The 'guiding principle' is that downstream investment by companies **'**owned' or 'controlled' by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream investment in Para 4.1 as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

4.6.2 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Para 4.1 which enables determination of total foreign investment in any/all Indian Companies.

4.6.3 For the purpose of this chapter,

(i) 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors.

(ii) 'Downstream investment' means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Para 4.1. Para 4.1.3 provides the guidelines for calculation of indirect foreign investment with conditions specified in para 4.1.3 (v)(iv) 'Foreign Investment' would have the same meaning as in Para 4.1

4.6.4 Guidelines for downstream investment by Investing Indian Companies 'owned or controlled by non resident entities' as per Para 4.1:

(i) The Policy on downstream investment comprises policy for (a) only operating companies (b) operating-cum-investing companies (c) only investing companies as below:

(ii) Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.

(iii) Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

(iv) Investing companies: Foreign Investment in Investing Companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

4.6.5 For infusion of foreign investment into such companies which do not have any operations and also do not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment.

Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

4.6.6. For Operating-cum- investing companies and investing companies (Para 4.6.4) and for companies as per para 4.6.5 above, downstream investments can be made subject to the following conditions:

(i) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;

(iii) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

(iv) For the purpose of downstream investment, the operating cum investing companies and the investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

4.7 GUIDELINES FOR CONSIDERATION OF FDI PROPOSALS BY FIPB:

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

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

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

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

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

4.7.6 FIPB would consider each proposal in its totality

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

(i) whether the items of activity involve industrial licence or not and if so the considerations for grant of industrial licence must be gone into;

(ii) whether the proposal involves any export projection and if so the items of export and the projected destinations.

(iii) Whether the proposal has any strategic or defence related considerations.

4.7.8 While considering proposals the following may be prioritised.

(i) Items falling in infrastructure sector.

(ii) Items which have an export potential.

(iii) Items which have large scale employment potential and especially for rural people.

(iv) Items which have a direct or backward linkage with agro business/farm sector.

(v) Items which have greater social relevance such as hospitals, human resource development, life saving drugs and equipment.

(vi) Proposals which result in induction of technology or infusion of capital.

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

(i) The extent of foreign equity proposed to be held (keeping in view sectoral caps if any

(ii) Extent of equity from the point of view whether the proposed project would amount to a holding company/wholly owned subsidiary/a company with dominant foreign investment (i.e. 76% or more) joint venture.

(iii) Whether the proposed foreign equity is for setting up a new project (joint venture or otherwise) or whether it is for enlargement of foreign/NRI equity or whether it is for fresh induction of foreign equity/NRI equity in an existing Indian company.

(iv) In the case of fresh induction offerings/NRI equity and/or in cases of enlargement of foreign/NRI equity, in existing Indian companies whether there is a resolution of the Board of Directors supporting the said induction/enlargement of foreign/NRI equity and whether there is a shareholders agreement or not.

(v) In the case of induction of fresh equity in the existing Indian companies and/or enlargement of foreign equity in existing Indian companies, the reason why the proposal has been made and the modality for induction/enhancement (i.e. whether by increase of paid up capital/authorized capital, transfer of shares (hostile or otherwise) whether by rights issue, or by what modality.

(vi) Issue/transfer/pricing of shares will be as per SEBI/RBI guidelines.

(vii) Whether the activity is an industrial or a service activity or a combination of both.

(viii) Whether the items of activity involves any restriction by way of reservation for the Micro & Small Enterprises sector.

(ix) Whether there are any sectoral restrictions on the activity

(x) Whether the proposal involves import of items which are either hazardous, banned or detrimental to environment (e.g. import of plastic scrap or recycled plastics).

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

4.8 CONSTITUTION OF FIPB:

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

(i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson

(ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry

(iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry

(iv) Secretary to Government, Economic Relations, Ministry of External Affairs

(v) Secretary to Government, Ministry of Overseas Indian Affairs.

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

4.9 APPROVAL LEVELS FOR CASES UNDER GOVERNMENT ROUTE

4.9.1 The following approval levels shall operate for proposals involving FDI under the Government route i.e. requiring prior Government approval:

(i) The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.1200 crore.

(ii) The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of CCEA. The FIPB Secretariat in DEA will process the recommendations of FIPB to obtain the approval of Minister of Finance and CCEA.

(iii) The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Minister of Finance (in-charge of FIPB).

4.10 CASES WHICH DO NOT REQUIRE FRESH APPROVAL

4.10.1 Companies may not require fresh prior approval of the Government i.e. Minister in-charge of FIPB/CCEA for bringing in additional foreign investment into the same entity, in the following cases:

(i) Cases of entities whose activities had earlier required prior approval of FIPB/CCFI/CCEA and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;

(ii) Cases of entities whose activities had sectoral caps earlier and who had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment alongwith the initial/original investment does not exceed the sectoral caps; and

(iii) The cases of additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose.

CHAPTER 5

POLICY ON ROUTE CAPS AND ENTRY CONDITIONS

5.1 PROHIBITION ON INVESTMENT IN INDIA.

FDI is prohibited in the following activities/sectors:

(a) Retail Trading (except single brand product retailing)

(b) Atomic Energy

(c) Lottery Business including Government /private lottery, online lotteries,etc.

(d) Gambling and Betting including casinos etc.

(e) Business of chit fund

(f) Nidhi company

(g) Trading in Transferable Development Rights (TDRs)

(h) Real Estate Business or Construction of Farm Houses

(i) Activities / sectors not opened to private sector investment.

Besides foreign investment in any form, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

AGRICULTURE

5.2 Agriculture & Animal Husbandry

5.2.1 100% FDI is allowed under automatic route in Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aquaculture and Cultivation of Vegetables & Mushrooms under controlled conditions and services related to agro and allied sectors.

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

5.2.2 For companies dealing with development of transgenic seeds/vegetables, the following conditions apply:

(i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.

(ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.

(iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.

(iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).

(v) Import of materials shall be in accordance with National Seeds Policy.

5.3 Tea Plantation

5.3.1 100% FDI is allowed in the Tea sector including tea plantations under Government route subject to the conditions of :

(i) Compulsory divestment of 26% equity of the company in favour of an Indian partner/Indian public within a period of 5 years

(ii) Prior approval of the State Government concerned in case of any future land use change.

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

INDUSTRY

5.4 MINING

5.4.1100% FDI is allowed under the automatic route in Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals(Development & Regulation) Act, 1957.

5.4.2 Coal and Lignite

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

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

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

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

(ii) Under the Industrial Policy Statement 1991, mining and production of minerals classified as "prescribed substances" and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422 dated 6^{th} October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).

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

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

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

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

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

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

MANUFACTURING

5.5 Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)

5.5.1 Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the equity capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Micro, Small and Medium Enterprises Development Act 2006.

5.6 Alcohol – Distillation & Brewing:

100% FDI is allowed under the automatic route.

5.7 Cigars & Cigarettes Manufacture:

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

5.8 Coffee & Rubber processing and warehousing:

100% FDI is allowed under the automatic route.

5.9 Defence Industry

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

(i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence.

(ii) Cases involving FDI will be considered by the FIPB and licences given by the Department of Industrial Policy & Promotion in consultation with Ministry of Defence.

(iii) The applicant should be an Indian company / partnership firm.

(iv) The management of the applicant company / partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company / partnership firm being resident Indians.

(v) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.

(vi) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.

(vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the foreign investor taking into account the category of weapons and equipment that are proposed to be manufactured.

(viii) There would be a three-year lock-in period for transfer of equity from one foreign investor to another foreign investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the FIPB and the Government.

(ix) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.

(x) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.

(xi) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.

(xii) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.

(xiii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.

(xiv) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.

(xv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons / entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.

(xvi) Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.

5.10 Drugs & Pharmaceuticals including those involving use of recombinant technology -

100% FDI is allowed under the automatic route

5.11 Hazardous chemicals viz. hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and di-isocyanates of hydrocarbon –

100% FDI is allowed under the automatic route and subject to the obtaining of Industrial licence under the Industries (Development & Regulation) Act 1951.

5.12 Industrial Explosives –

100% FDI is allowed under the automatic route and subject to the obtaining of Industrial licence under the Industries (Development & Regulation) Act 1951 and regulations under Explosives Act 1898.

5.13 POWER

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

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

ii) Non-Conventional Energy Generation and Distribution.

iii) Distribution of electric energy to households, industrial, commercial and other users and

iv) Power Trading

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

Note: Para 5.13.1 (i) to (iii) above do not include generation, transmission and distribution of electricity produced in atomic power plant/atomic energy since private investment in this sector/activity is prohibited and is reserved for public sector.

SERVICES SECTOR

5.14 Advertising and Films

5.14.1 100% FDI under the automatic route is allowed in Advertising sector

5.14.2 100% FDI under the automatic route is allowed in Film Industry including film financing, production, distribution, exhibition, marketing and associated activities related to film industry.

5.15 Civil Aviation Sector

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

5.15.2 For the purposes of the Civil Aviation sector:

(i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;

(ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;

(iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights.

(iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward.

(v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;

(vi) "Helicopter" means a heavier-than -air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;

(vii) "Scheduled air transport service", means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public.

(viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Chartered and Cargo airlines.

(ix) "Chartered" and "Cargo" airlines would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation.

(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;

(xi) "Ground Handling" means (i) ramp handling , (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

5.15.3 Policy for FDI in Civil Aviation sector

(i) Airports:

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

(b) Existing projects- FDI upto 100% is allowed. The investment upto 74% is under the automatic route and beyond 74% under the Government route.

(ii) Air Transport Services:

(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non- Scheduled Airlines; Chartered Airlines; Cargo Airlines; helicopter and seaplane services.

(b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled, Non-Scheduled, and Chartered airlines.

(c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.

(iii) FDI ceilings in Air Transport Services:

(a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline - FDI up to 49% and investment by Non-resident Indians (NRI) up to 100% allowed on the automatic route.

(b) Non-Scheduled Air Transport Service/ Non-Scheduled airlines, Chartered airlines, and Cargo airlines- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed. FDI in on the automatic route upto 49% and on the Government route beyond 49% and upto 74%.

(c) Helicopter services/seaplane services requiring DGCA approval- FDI up to 100% allowed on the automatic route.

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

(a) Ground Handling Services- FDI up to 74% and investment by Non-resident Indians (NRI) up to 100% allowed. FDI under the automatic route upto 49% and through the Government route beyond 49% and upto 74%. This will be subject to sectoral regulations and security clearance.

(b) Maintenance and Repair organizations; flying training institutes; and technical training institutions - FDI up to 100% allowed on the automatic route.

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

5.16. Asset Reconstruction Companies:

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

5.16.2 Persons resident outside India, other than Foreign Institutional Investors (FIIs), can invest in the equity capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Automatic Route is not available for such investment. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs and FDI is restricted to 49 per cent of the paid-up capital of the ARC.

5.16.3 However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest upto 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.

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

5.17 Banking –Private sector

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

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

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

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

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

  (a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital.

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

  (c) Applications for foreign direct investment (FDI route) in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.

  (d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and FIPB as per para 4.2(iii) above.

  (e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.

  (f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to foreign investors as well.

(ii) Setting up of a subsidiary by foreign banks

  (a) Foreign banks will be permitted to either have branches or subsidiaries but not both.

(b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.

(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.

(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.

(e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.

(f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI

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

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

5.18 Banking- Public Sector

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

5.19 Broadcasting

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

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

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

5.19.4 Headend-In-The-Sky (HITS) Broadcasting Service:

(i) Headend-in-the-Sky (HITS) Broadcasting Service refers to the multichannel downlinking and distribution of television programme in C-Band or Ku Band wherein all the pay channels are downlinked at a central facility (Hub/teleport) and again uplinked to a satellite after encryption of channel. At the cable headend these encrypted pay channels are downlinked using a single satellite antenna, transmodulated and sent to the subscribers by using a land based transmission system comprising of infrastructure of cable/optical fibres network.

(ii) The total direct and indirect foreign investment including portfolio and foreign direct investment in HITS shall not exceed 74%. FDI upto 49% would be on automatic route and beyond that under government route.

(iii) This will be subject to such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting.

5.19.5 Setting up hardware facilities such as up-linking, HUB etc.

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

a) Foreign investment of FDI and FII up to 49% would be permitted under the Government route for setting up Up-linking HUB/ Teleports;

b) FDI up to 100% would be allowed under the Government route for Up linking a Non- News & Current Affairs TV Channel;

c) Foreign investment of FDI and FII up to 26% would be permitted under the Government route for Up-linking a News & Current Affairs TV Channel subject to the condition that the portfolio investment from FII/ NRI shall not be "persons acting in concert" with FDI investors, as defined in the SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(ii) The above will be further subject to the condition that the Company permitted to uplink the channel shall certify the continued compliance of this requirement through the Company Secretary at the end of each financial year.

(iii) FDI for Up-linking TV Channels will be subject to compliance with the Up-linking Policy notified by the Ministry of Information & Broadcasting from time to time.

5.20 Business Services

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

5.21 Commodity Exchanges

5.21.1 Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.

5.21.2 For the purposes of this chapter,

(i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.

(ii) "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952

(iii) "Association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.

(iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract.

(v) "Commodity derivative" means-

- a contract for delivery of goods, which is not a ready delivery contract; or
- a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.

5.21.3 Policy for foreign investment in Commodity Exchanges

(i) There is composite ceiling of 49% for foreign investment under Government route as follows:

(a) Investment upto 26% as Foreign Direct Investment (FDI) under the FDI Scheme incorporated as Schedule 1 under regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000 (FEMA Regulations)

(b) Investment upto 23% by registered FII under the Portfolio Investment

Scheme incorporated as Schedule 2 under Regulation 5(2) of the FEMA Regulations,

(ii) FII purchases shall be restricted to secondary market only.

(iii) No foreign investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies.

5.22 Construction and maintenance

5.22.1 100% FDI is allowed under the automatic route in Construction and maintenance of-roads, rail-beds, bridges, tunnels, pipelines, ropeways, runways, waterways & water reservoirs, hydroelectric projects, power plants and industrial plants.

5.22.2 100 % FDI is allowed under the automatic route in construction and maintenance of Roads and highways offered on BOT basis including collection of toll.

5.22.3 100 % FDI is allowed under the automatic route in construction and maintenance of Rural Drinking Water Supply Projects, Package Water Treatment Plants, Rain and Rain Water Harvesting Structures, Waste-Water Recycling And Re-Use Techniques And Facilities, Rain-Water Re- Charging And Re-Use Techniques Of Ground Water.

5.22.4 **Ports and Harbours**: 100% FDI is allowed under the automatic route for:

(i) Leasing of existing assets of ports

(ii) Construction/creation and maintenance of assets such as-container terminals bulk/break bulk/multipurpose and specialized cargo berths, warehousing, container freight stations, storage facilities and tank farms, cranage/ handling equipment, setting up of captive power plants, dry docking and ship repair facilities.

(iii) Leasing of equipment for port handling and leasing of floating crafts

(iv) Captive facilities for port based industries.

5.22.5 FDI upto 100% is permitted on the automatic route for **Mass Rapid Transport Systems** in all Metropolitan Cities including associated commercial development of real estate. The conditions at para 5.23.1, 5.23.2 and 5.23.3 would not apply.

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

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

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

(i) In case of development of serviced housing plots, a minimum land area of 10 hectares

(ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts

(iii) In case of a combination project, any one of the above two conditions would suffice

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

(j) 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.

5.23.3 At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of serviced housing plots.

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

5.23.5 The investor/investee company 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.

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

5.23.7 The conditions as at paras 5.23.1, 5.23.2 and 5.23.3 would not apply to Hotels & Tourism, Hospitals and SEZ's.

5.23.8 For investment by NRIs, the conditions at paras 5.23.1, 5.23.2 and 5.23.3 would not apply.

5.23.9 100% FDI is allowed under the automatic route in development of Special Economic Zones (SEZ) without the conditionalities at paras 5.23.1, 5.23.2 and 5.23.3 above. This will be subject to the provisions of Special Economic Zones Act 2005 and the SEZ Policy of the Department of Commerce.

5.23.10 FDI is not allowed in Real Estate Business.

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

5.24.1 100% FDI is allowed under the Government route.

5.24.2 This will be subject to existing Law i.e Indian Post Office Act 1898 and exclusion of activity relating to the distribution of letters.

5.25. Credit Information Companies (CIC)

5.25.1 Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.

5.25.2 Foreign investment consisting of FDI and FII upto 49% is permitted under the Government route, subject to regulatory clearance from RBI.

5.25.3 Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 49% for foreign investment.

5.25.4 Such FII investment would be permitted subject to the conditions that:

(a) No single entity should directly or indirectly hold more than 10% equity.

(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and

(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

5.26 Health and Medical Services

100% FDI is allowed under the automatic route

5.27 Hotels and Tourism related Industry

5.27.1 100% Foreign Investment is allowed under automatic route.

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

(i) Travel agencies, tour operating agencies and tourist transport operating agencies

(ii) Units providing facilities for cultural, adventure and wildlife experience to tourists

(iii) Surface, air and water transport facilities for tourists

(iv) Convention/seminar units and organizations

5.28 Industrial Parks - both setting up and already established Industrial Parks

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

5.28.2 FDI up to 100% on the automatic route is allowed in Construction development projects, etc. prescribing therein, inter-alia, the conditions for minimum capitalization, minimum area requirements and lock-in of original investment as per para 5.23 above.

5.28.3 For the purposes of this chapter:

(i) "Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.

(ii) "Infrastructure" refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.

(iii) "Common Facilities" refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.

(iv) "Allocable area" in the Industrial Park means-

(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.

(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.

(c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.

(v) "Industrial Activity" means manufacturing, electricity, gas and water supply, post and telecommunications, software publishing, consultancy and supply, data processing, database activities and distribution of electronic content, other computer related activities, Research and experimental development on natural sciences and engineering, Business and management consultancy activities and Architectural, engineering and other technical activities.

5.28.4 FDI up to 100% under the automatic route is allowed both in setting up new and in established industrial parks and would not be subject to the conditionalities applicable for construction development projects etc. spelt out in Para 5.23 above provided the Industrial Parks meet with the under-mentioned conditions:

(i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;

(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

5.29 Insurance

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

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

5.30 Infrastructure Company in the Securities Market:

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

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

(ii) FDI will be allowed under the Government route; and

(iii) FII can invest only through purchases in the secondary market.

5.31 Non-Banking Finance Companies (NBFC)

5.31.1 100% foreign investment in NBFC is allowed under the automatic route in the following activities:

(i) Merchant Banking

(ii) Under Writing

(iii) Portfolio Management Services

(iv) Investment Advisory Services

(v) Financial Consultancy

(vi) Stock Broking

(vii) Asset Management

(viii) Venture Capital

(ix) Custodian Services

(x) Factoring

(xi) Credit Rating Agencies

(xii) Leasing & Finance

(xiii) Housing Finance

(xiv) Forex Broking

(xv) Credit Card Business

(xvi) Money Changing Business

(xvii) Micro Credit

(xviii) Rural Credit

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

(i) US $0.5 million for foreign capital upto 51% to be brought upfront

(ii) US $ 5 million for foreign capital more than 51% and upto 75% to be brought upfront

(iii) US $ 50 million for foreign capital more than 75% out of which US$ 7.5 million to be brought upfront and the balance in 24 months.

(iv) 100% foreign owned NBFCs with a minimum capitalisation of US$ 50 million can set up step down subsidiaries for specific NBFC activities, without any restriction on number of operating subsidiaries and without bringing in additional capital.

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

(vi) Non- Fund based activities : US $0.5 million for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

Note: The following activities would be classified as Non-Fund Based activities:

(a) Investment Advisory Services

(b) Financial Consultancy

(c) Forex Broking

(d) Money Changing Business

(e) Credit Rating Agencies

(vii) This will be subject to compliance with the guidelines of RBI.

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

5.31.4 Venture Capital Fund (VCF): A Foreign Venture Capital Investor(FVCI)may contribute upto 100% of the capital of an Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments can be made under automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can also invest in domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to RBI regulations and FDI policy. However, in case the entity undertaking venture capital fund activity is a Trust registered under the Indian Trust Act, 1882, foreign investment would be permitted under the Government route. FVCIs are also allowed to invest in other companies subject to FDI Regulations.

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

5.32 Petroleum & Natural Gas Sector

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

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

5.33. Print Media

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

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

(i) Foreign investment, including FDI and investment by NRIs/PIOs/FII, up to 26%, is permitted under the Government route.

(ii) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.

(iii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008.

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

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

5.33.4 Publication of facsimile edition of foreign newspapers:

(i) FDI up to 100% is permitted under Government route in publication of facsimile edition of foreign newspapers provided the FDI is by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.

(ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956.

(iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.

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

5.35 Security Agencies in Private sector

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

- a foreign company cannot be considered for a license under the Act

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

5.36 Satellites – Establishment and operation:

5.36.1 FDI upto 74% is allowed under Government route.

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

5.37 Storage and Warehouse Services:

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

5.38 Telecommunication

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

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

(ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. In any case, the `Indian' shareholding will not be less than 26 percent.

(iii) FDI up to 49 percent is on the automatic route and beyond that on the Government route. FDI in the licensee company/Indian promoters/investment companies including their holding companies shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.

(iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

(v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.

5.38.2 Security Conditions:

(i) The Chief Officer In-charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.

(ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company.Clearance from the licensor (Department of Telecommunications) would be required if such information is to be provided to anybody else.

(iii) For security reasons, domestic traffic of such entities as may be identified /specified by the licensor shall not be hauled/routed to any place outside India.

(iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.

(v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.

(vi) The majority Directors on the Board of the company shall be Indian citizens.

(vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.

(viii) The Company shall not transfer the following to any person/place outside India:-

(a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and

(b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).

(ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.

(xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).

(xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception

Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.

(xiii)The licensee company is not allowed to use remote access facility for monitoring of content.

(xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.

(xiv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.

(xv) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.

(xvii)The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.

(xviii)It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

(xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.

(xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this circular irrespective of the level of FDI.

(xxii)Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

5.38.3 The conditions at para 5.39.2 above shall also be applicable to the companies operating telecom service(s) with the FDI cap of 49%.

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

5.38.5 (i) FDI upto 74% is allowed in following activities

(a) ISP with gateways

(b) ISP's not providing gateways i.e without gate-ways (both for satellite and marine cables)

Note: The new guidelines of August 24, 2007 Department of Telecommunications provide for new ISP licenses with FDI upto 74%.

(c) Radio paging

(d) End-to-End bandwidth

(ii) FDI upto 49% would be allowed under the automatic route and above that under the Government route.

(iii) This will be subject to licensing and security requirements notified by the Department of Telecommunications.

5.38.6 (i) FDI upto 100% is allowed for the following activities

(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I)

(b) Electronic Mail

(c) Voice Mail

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

(iii) This will be subject to the condition that such companies will divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.

(iv) This will be subject to licensing and security requirements notified by the Department of Telecommunications.

5.39 Trading:

5.39.1 100% FDI is permitted under the automatic route for trading companies for the following activities:

5.39.1.1 Cash & Carry trading Wholesale Trading/ Wholesale Trading.

(i) **Definition**: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex- port/ex-bonded warehouse business sales and B2B e-Commerce.

(ii) Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):

(a) For undertaking WT, requisite licenses/registration/ permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.

(b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers,only when WT are made to the following entities:

   (I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or

   (II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/ Government Body/ Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or

   (III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or

   (IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption**.**

Note: An Entity to whom WT is made, may fulfill any one of the 4 conditions.

(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.

(d) WT of goods would be permitted among companies of the same group . However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture and the wholesale made to the group companies should be for their internal use only.

(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.

(f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.

5.39.1.2 Trading for exports.

5.39.1.3 E-commerce activities: E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

5.39.2 100% FDI is permitted under the Government route for trading companies for the following activities:

(i) Trading of items sourced from small scale sector.

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

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

(i) FDI up to 51% in retail trade of 'Single Brand' products would be subject to the following conditions:

(a) Products to be sold should be of a 'Single Brand' only.

(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.

(c) 'Single Brand' product-retailing would cover only products which are branded during manufacturing.

(ii) Application seeking permission of the Government for FDI in retail trade of 'Single Brand' products would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The application would specifically indicate the product/ product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/ product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

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

5.40. Transport and Transport Support Services:

100% FDI under the automatic route is allowed for:

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

5.40.2 Transport Support Services:

(i) Support services to land transport like operation of highway bridges, toll roads, and vehicular tunnels.

(ii) Support services to water transport like operation and maintenance of piers, loading and discharging of vessels.

(iii) Services incidental to transport like cargo handling incidental to land, water and air transport

(iv) Rental and leasing of - motor vehicles without operator for passenger transport and freight transport, refrigerated/cold transport.

(v) Renting of -transport equipment without operator, of other transport equipment.

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

CHAPTER 6

REMITTANCE, REPORTING AND VIOLATION

6.1 REMITTANCE AND REPATRIATION

6.1.1 Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies:

(i) Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations 2000 under FEMA.

(ii) 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.

(iii) Remittance on winding up/liquidation of Companies AD Category – I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, 1956. AD Category – I banks shall allow the remittance provided the applicant submits:

   a. No objection or Tax clearance certificate from Income Tax Department for the remittance.

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

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

   d. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are 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.

6.1.2 Repatriation of Dividend : Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

6.1.3 Repatriation of Interest: Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

6.2. REPORTING OF FDI

6.2.1 Reporting of Inflow

(i) An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form.

(ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category – I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

6.2.2 Reporting of issue of shares

(i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures / fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, not later than 30 days from the date of issue of shares.

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

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

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

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

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

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

Note: For companies with paid up capital with less than Rs.5 crore, the above mentioned certificate can be given by a practicing company secretary.

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

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

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

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

6.2.3 Reporting of transfer of shares

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

6.2.4 Reporting of Non-Cash

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

(i) In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.

(ii) In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

6.2.5 Reporting of FCCB/ADR/GDR Issues

The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the prescribed Form within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the prescribed Form to the Reserve Bank within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR/GDR mechanism is either repatriated to India or utilized abroad as per the extant Reserve Bank guidelines.

6.3 ADHERENCE TO GUIDELINES/ORDERS AND CONSEQUENCES OF VIOLATION

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

6.3.1 Penalties

(i) If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non- compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/FIPB/Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

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

(iii) Any Adjudicating Authority adjudging any contraventions under 6.3.1(i), 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.

6.3.2 Adjudication and Appeals

(i) For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

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

6.3.3 Compounding Proceedings

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

Board for Industrial and Financial Reconstruction (BIFR)

PROCEDURE AND GUIDELINES TO BE FOLLOWED BY ASSET SALE COMMITTEE (ASC) APPOINTED BY BIFR FOR SALE OF ASSETS OF SICK COMPANIES.

Board for Industrial and Financial Reconstruction (BIFR) on 24th August, 2009 have approved the following Procedure and Guidelines for sale of Assets of sick companies.

(a) An Asset Sale Committee (ASC) shall be formed by the Operating Agency (OA) / Monitoring Agency (MA) in terms of the orders issued by the BIFR. Broadly, the composition of Asset Sale Committee would be as follows:-

1. DGM or above level officers from Operating Agency (OA)/ Monitoring Agency (MA) as representative of OA /MA;
2. Company's Representative of the rank of Managing Director or Dy. MD.
3. Representative of Secured Creditors – If there are more than one Secured Creditors, one representative from each secured creditor needs to be nominated.
4. If it involves sale of land, Revenue Officer of the level of Sub Divisional Magistrate of the District in which the land in question is located.
5. Representative of administrative Ministry or Department in respect of Central Govt. PSUs / representative of the concerned State Govt. Department in respect of State Govt. PSUs.
6. Special Director, if any, nominated by BIFR.

(b) All the assets should be got valued (if not already done) by an independent Government approved valuer and having regard to the likely market prices thereof, reserve price should be fixed in respect of each of the assets, if possible. Asset valuation should be completed within a month of the order.

(c) The assets to be sold may be suitably divided into saleable lots orpackages, with a view to fetching maximum price. Where land sale is involved, a representative of the concerned State Govt. (s) should also be co- opted as member(s) of the ASC.

(d) The sale of assets should be effected by way of public sale through sealed tenders, after adequate notice is given to the public through advertisements in three leading newspapers / trade journals – one of the news papers being in English and the other in the regional language of the locality where the assets are located. 45-days' time will be allowed to the bidders to inspect the assets and submit their offers. The cost of the advertisements shall be charged to the company and recovered from it.

(d) (i) Sale of such assets of Sick Companies can be considered through "e auction" also, provided that the entire process is considered in a free and fair manner through competitive bidding.

(e) The advertisements should clearly state that the proposed sale of assets of the company is being effected under the directions of the Board for Industrial & Financial Reconstruction (hereinafter referred to as the 'Board').

(f) The prospective buyers / bidders will be allowed to inspect the assets on stipulated date or dates in the presence of the company's representatives. Offers /bids shall be made in sealed envelops to be opened by the Assets Sale Committee (ASC) on previously specified and notified place, date and time in the presence of the bidders' representatives.

(g) The bidder should deposit by means of a Bank Draft earnest money deposit (EMD) equivalent to 2% - 5% of the notified reserve price in respect of each asset / package along with the bid. Bids not accompanied by the EMD shall be rejected. EMD shall be forfeited if the party whose offer / bid is finally accepted defaults in making the balance payment in terms of the conditions of sale and completing other sales formalities within the due date. If, however, the sale is completed within the specified time limit, the EMD shall be adjusted towards the final sale price. The EMD will not, however, carry any interest.

(i) In respect of Central Govt. PSUs / State Govt. PSUs, procedure as laid down under Rule 198 of General Financial Rules, 2005, Govt.of India, Ministry of Finance (Deptt. of Expenditure) relating to "Disposal through Advertised Tender" will be followed. The important aspects to be kept in view while disposing the goods through advertised tender are as under:-

1. The basic principle for sale of such goods through advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold. All the required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. Applicability of taxes, as relevant, should be clearly stated in the document.

2. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding.

3. The bidders should be asked to furnish bid security along with their bids. The amount of bid security should ordinarily be ten percent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document.

4. The bid of the highest acceptable responsive bidder should normally be accepted. However, if the price offered by that bidder is not acceptable, negotiation may be held only with that bidder. In case such negotiation does not provide the desired result, the reasonable or acceptable price may be counter-offered to the next highest responsive bidder(s).

5. In case the total quantity to be disposed of cannot be taken by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder.
6. Full payment, i.e. the residual amount after adjusting the bid security should be obtained from the successful bidder before releasing the goods.
7. In case the selected bidder does not show interest in lifting the goods, the bid security should be forfeited and other actions initiated including re-sale of the goods in question at the risk and cost of the defaulter, after obtaining legal advice by OA.
8. Late bids i.e. bids received after the specified date and time of receipt should not be considered.

(h) Where a bid has been finally accepted the purchaser shall be required to pay the balance of the purchase consideration in two instalments of 50% and balance amount of the total selling price minus the EMD amount, payable, respectively, before the end of 45-days and 90-days respectively from the date on which intimation regarding the final acceptance of the bid is dispatched to him by Registered Post (A.D.) /Speed Post at his notified address.

(i) The successful purchaser shall within 15-days of the receipt of intimation regarding the acceptance of his bid, furnish a bank guarantee, valid for one year, as may be considered satisfactory by the OA / MA, to secure full and timely payment of consideration for the assets purchased.

(j) The EMD received from unsuccessful bidders will be refunded to them, without any interest, promptly.

(k) The possession of the assets purchased and the title thereof shall be transferred to the purchaser only on receipt of full payment of the purchase consideration along with interest @ 15% per annum in case of delayed payments, if any, which may be accepted with the prior approval of the Board.

(l) The extension of time to be granted by the Board in terms of para (k) above will not exceed 90-days each from the due date(s) of the respective instalment(s) and shall be subject to prior extension, if necessary, of the period of validity of the bank guarantee for the unpaid amount, besides payments of interest @ 15% per annum for extended period.

(m) The sale of tenancy rights shall be subject to the applicable Rent Control laws, if any.

(n) The ASC will open the bids / offers on the appointed date, time and place in the presence of its members, bidders, BIFR, Special Director (if any), and the representative of the company (if any available). It would examine the offer(s) and select the highest / best acceptable offer(s) in each category, specifying the reasons therefore, and draw up formal proceedings in this regard. If the decision is by the consensus of all the members present and only the highest bid(s) above the respective reserve price(s) fixed is / are proposed to be accepted, the ASC would be free to finalise the same and keep the funds (which are received in deposit in the name of the company for being eventually dealt with in accordance with the directions of the Board.

(o) The expenses which may be deducted by the OA / MA/ ASC from thegross sale proceeds of the assets of the company would include the expenditure incurred by the OA / MA / Secured Creditors on the valuation of assets (where necessary), security and insurance charges for the relevant assets from the date of the orders issued by the BIFR in this behalf as well as the expenses incurred on the issue of advertisements for change of management or sale of assets either through e-auction or through sealed tenders which have not been earlier reimbursed by the company.

(p) In cases -

(i) where there is lack of unanimity amongst the members of the ASC with regard to acceptance of any bid / offer or

(ii) where the ASC proposes to accept any offer / bid other than the highest one;

or

(iii) accept a bid which is below the reserve price, it would obtain prior approval of the Board in this regard, after specifying the reasons thereof and furnishing all relevant background / information.

(q) All advertisements for sale of assets will be issued on the basis of the sale being on “As is where is” basis and reserving the right to accept or reject any offer without assigning any reasons thereof.

(r) The Asset sale Committee shall obtain the prior permission / approval of the Board, for any relaxation of the above guidelines.

PROCEDURE FOR LISTING OF REFERENCES AND MISCELLANEOUS APPLICATIONS IN BIFR

Following guidelines, as per approval of Board for Industrial and Financial Reconstruction (BIFR) are issued in regard to listing of references and applications in BIFR:-

1. Before the Board for Industrial and Financial Reconstruction (BIFR) the filings are primarily in two categories. The first is the filing of References reporting sickness of the Company and requesting for measures of rehabilitation. The second is miscellaneous filing including applications and request letters during the pendency of the Reference.

2. The References are to be listed within sixty days of their filing, so as to enable compliance with the mandatory requirement of service of the Reference to all the parties before it is taken up for hearing by the Bench.

3. Regarding the listing of Miscellaneous applications in pending References, the following procedure is proposed to be followed:-

    (i) In addition to the monthly list published at the beginning of the month notifying the listing of the References, there would be a daily cause list notifying the listing of the applications. This will be notified on the website and displayed on the Notice Board. Orders and judgments will also be pronounced in open court. No separate notification will be given to the parties / authorized agents / advocates of the listing of the applications.

    (ii) The list would be in three parts:

    Part I : - Pronouncement of orders and judgments

    Part II : - Miscellaneous Applications

    Part III : - References as per Advance List.

    (iii) The list would be displayed on the Notice Board as well as on the website.

    (iv) The NIC-BIFR Computer Centre would give necessary support in the computerization of the maintenance of data base as also of the website.

    (v) Before filing the application, the applicant will be required to serve, at least two days prior to filing, to all the parties appearing in the particular case by speed post/Registered AD. In case there is urgency and the applicant is seeking waiver of serving of two days' prior notice, he shall make an additional application to that effect which shall be considered by the Bench at the time of considering the main application.

    (vi) The applications will be received along with proof of service of the advance copy, at the reception counter of BIFR and given a diary number. The application can be filed by an authorized agent or an advocate duly appointed by the applicant.

(vii) Filings would be permitted till 3.00 pm when all the filings for the day would be sent to the Bench Co-ordination Cell / Registrar of the BIFR

(viii) In the Bench Co-ordination Cell, one person would be authorized, to be dedicated, to only coordinating the receipt of applications. The Authorized Official would enter the details of the applications so received within one working day.

(ix) On receipt of application, there would be a preliminary scrutiny of the application by the Authorized Official in the Bench Co-ordination Cell who would then put up the application to the Registrar for examination of the comments/objections/defects pointed out by the Authorized Official. The Registrar would either approve the comments / objections / defects or suitably modify them. If there are any objections or requirements from the Registry, the same should be conveyed to the applicant within seven (07) working days by the Registry/Authorized Officer.

(x) There would be a time limit of two weeks for removal of objections. If for any particular objection, the registry is not satisfied about the compliance and the applicant disputes the ruling of registry over removal of objections, the proceedings should be produced before the Board on a date requested for by the applicant so as to enable the applicant to satisfy the Board.

(xi) A list of the applications, mentioned in para 9 above, will be forwarded to the Bench officers, who alongwith their dates of receipt will forward to the Secretary for the purpose of listing.

(xii) A date of hearing would be scheduled on the sixth working day after the filing of the application. Where objections are removed the applications should be listed strictly on the basis of the date of filing.

(xiii) On the date so fixed the parties appearing would be heard. In case the Bench feels that notice must go to the parties who are not appearing and their presence is required, then a fresh notice may be issued to all such parties notifying the next date. However, if the Bench feels that urgent orders need to be passed while such notice is served on parties who are not present, it may pass these ad-interim orders pending the hearing of the parties.

(xiv) All order / judgments would be passed after hearing the parties. The order / judgment may either be passed immediately on hearing the parties or the Order may be reserved and be pronounced later in open court after notification in Part-I of the list.

(xv) After the orders / judgments are ready for pronouncement, it would be shown for pronouncement in the list after two days to enable parties to be present for the pronouncement, if they so desire.

(xvi) The name of the lawyers or parties would be indicated in each matter in the list.

GUIDELINES FOR PREPARATION OF REHABILITATION SCHEME

1.1 The company shall provide detailed, item-wise inventory of all its fixed and current assets with their book values as on the last ABS date and also estimated as on the cut-off-date (COD). It shall also furnish detailed break up of all its liabilities, as on the same dates, under the head of (i) Secured dues (of banks, institutions and others with break up into principal, simple/compound interest and other charges etc.); (ii) unsecured dues including electricity dues (with break up into pressing creditors and others); (iii) Workers' dues; (iv) Dues towards Government/Statutory/local bodies/PF/ESI; and (v) Contingent liabilities, if any. In case the last Balance sheet if yet to be audited, provisional figures may be given. In such a situation, the previous year's ABS figures should be shown. The above information based on ABS/estimates, as on above dates, should be supplied to BIFR (4 sets), within a period of four (4) weeks. This information should be duly certified by the company's Director (Finance) / statutory auditor. Amounts below Rupees one lakh each could be clubbed together. The details, as on the COD, shall form an Annexure to the revival proposal as also the draft rehabilitation scheme (DRS) to be circulated by the Board, if rehabilitation is feasible/viable. No DRS will be circulated in the absence of this information.

1.2 The company in their proposal shall specify the cut-off date (COD) and indicate clearly as to when their net worth will become positive. The period for the rehabilitation scheme (i.e. the period by which accumulative losses will be wiped out) should be minimum possible and in any case not exceed seven years, i.e. the limit fixed by RBI guidelines in this regard.

1.3 In case the company has not undertaken valuation of its assets by any Govt./bank approved valuer in the recent past, the company shall get its fixed assets valued by Govt./bank approved valuer, within a period of three (3)weeks time, at its own cost. The valuation Report must be shared with all concerned agencies immediately upon receipt of the same and four(4) copies thereof would also be submitted to BIFR.

1.4 If so ordered specifically by BIFR, prior to formulation of any draft scheme for revival, a detailed Techno-Economic Viability (TEV) study should be carried out by the OA at the company's cost. The appointment of the technical consultants should be finalized in consultation with the company but the OA's decision in this regard would be final. The TEVS and Valuation Reports should be shared with all concerned agencies from whom reliefs and concessions are being envisaged immediately on receipt, and four copies thereof submitted to BIFR. In cases the TEVS valuation report is bulky, only a gist thereof may be submitted to BIFR in four copies.

1.5 While conducting the TEV study the following should be kept in view:-

a) The current industry profile as well as the perspective for the next 5-6 years, with appropriate demand forecasting and competitive environment.

b) Desirable cost reduction measure.

c) Managerial competence of the promoters and the executive level suggesting improvements therein.

d) Contingent liabilities.

2. The company shall submit a comprehensive and fully tied up proposal, indicating verifiable means of finance, within a period of four (4) weeks, to all concerned from whom it expects reliefs. The proposal should preferably be based on RBI parameters.Failing that, chances for one time settlement (OTS) of secured dues of the company could also be explored.

3. As a certain time gap between preparation of the draft scheme by the company/MA vis-à-vis its sanction by BIFR would be inevitable, the company/OA, besides ensuring repayment of the crystallized dues upto the COD, would also ensure that the fund required to meet such liabilities for this intervening period is also provided in the draft scheme to be considered by the Board.

4. The company shall furnish in their proposal the names and addresses of all concerned agencies from whom reliefs /concessions are required u/s 19 of SICA, clearly indicating reliefs and concessions envisaged from each.

5. The scheme should take care of all the known liabilities of the company. Dues of the unsecured creditors should also be given appropriate treatment, which, however, should not be better than the one provided for the secured dues of the company.

6. In respect of Govt./statutory/local bodies, only those reliefs & concessions should be included which have reasonable prospects of being granted. The dues of the pressing creditors such as State Electricity Boards (SEBs) etc. should be covered. If any sacrifices are expected from workers, the same shall be discussed with them and their written consent shall be obtained.

7.1 The company/OA would ensure infusion of atleast 30% of the total cost of the revival scheme (excluding the value of reliefs and concessions and other sacrifices) by the promoter(s). The projections in the draft scheme should not exceed the industry's average and the DSCR should not fall below 1.33.

7.2 Any shortfall in cash-flow projections should be met by the promoters by bringing in interest-free funds from sources outside the company. Various measures for strengthening and streamlining the management set up like appointment of Concurrent Auditor(s); constitution of Management Committee and appointment of nominee Directors, shall be suggested. Specific dates should be mentioned for discharging each of the commitment/obligations.

8.1 Working capital needs should be assessed in consultation with Banks with a consensus arrived at on the method of lending, quantification of irregular component and other connected issues, like margin requirement, level of inventory, and level of finance as per latest credit policy of RBI.

8.2 As per loan agreements, the company would be required to route its sale proceeds/transactions through its financing banks. Banks should allow the sick company to operate its accounts without any tagging unless tagging its permitted by BIFR or agreed to by the company. If the company is permitted by BIFR to maintain accounts with another bank, statement of account from such bank should be given to the financing banks by the company at monthly intervals to enable them to verify the utilization of sale proceeds.

9. The company shall not dispose of, lease out, encumber or alienate any of its fixed and current assets, without specific prior approval of BIFR. However, if the unit is working, the current assets could be utilized for running day-to-day operations, subject to keeping proper records thereof and routing all transactions through the account with the company's financing bank(s) only unless specifically permitted as stipulated under 8.2.

10. The company/promoter(s) can induct strategic investor(s)/co-promoter(s), but the company/existing promoter(s) would ensure that such induction of strategic investor(s)/co-promoter(s) does not entail 'change of management' (COM) of the company. The company/promoter(s) would furnish the details of such strategic investor(s)/co-promoter(s) alongwith the copies of MOU(s) /agreement(s) entered into with them. In case, COM of the company is envisaged, by way of induction of strategic investor(s)/ co-promoter(s), the same need to be done through a transparent process, and the company/OA shall obtain specific prior permission of BIFR for COM.

11. The company shall note that protection of Section22(1) of SICA would not be available to it against withholding of any of the workers' dues including EPF & ESIC dues (other than damages levied, if any), gratuity, wages for the working period, etc.The company shall not default in the timely payment of any such dues on the ground that its case is pending with the BIFR.

12. The secured and unsecured creditors are not permitted to file/pursue suits already filed at this stage. The Bench, however, would reconsider its decision in this regard, if the directions issued by the Board are not complied with by the company within the given time frame.

13. In case of change in the Accounting Year beyond 3months, prior approval for the same may be obtained from the concerned Registrar of Companies.

14. ESIC & EPF authorities shall convey their dues with break up viz. principal, interest, penalties etc. to the OA within a period of 4 weeks. along with the acceptable mode of payment thereon as per their policy.

15. BIFR may consider change of management (COM) if the company is not able to submit a fully tied up rehabilitation scheme within a reasonable time.

16. The company would allow the OA to have access to all information and allow inspection of the plant and furnish authentic data to them, as required, promptly. Any instance of non-cooperation or delay on the company's part would be viewed seriously. The OA in turn shall ensure that the roles of BIFR's OA and Bank/Financial Institutions as the lending organization are kept distinct. The actual cost to be incurred by the OA shall be brone by the company.

17. Failing availability of any acceptable proposal & other relevant information from the company within the given time frame, the OA may work out a fully tied up scheme of its own under RBI guidelines, if practicable. Such a scheme could be offered to interested parties if change of management becomes necessary in future.

18.1 The OA, upon receipt of the draft revival proposal (DRP) from the company, would examine/consider the same in a joint meeting (JM) of the concerned agencies from whom the reliefs & concessions are being envisaged and, in case the said proposal is found to be feasible/viable and also found to be generally acceptable by the concerned agencies from whom the reliefs and concessions are being envisaged, the OA would prepare a draft of the revival scheme for the company's revival incorporating, inter-alia, therein the outcome of discussions/decisions in the said JM and submit the same to the Board, alongwith the minutes of the JM for its further consideration by the Board. The OA would complete this exercise of preparation of draft scheme for the company's revival within a period of six(6) weeks from the date of receipt of the draft revival proposal from the company.

18.2 In case the OA does not receive the draft revival proposal from the company within the stipulated time frame or the OA finds that the company's draft revival proposal is not fully tied up with the 'means of finance' and/or the said proposal is not feasible/viable/acceptable to the concerned agencies, from whom the reliefs & concessions are being envisaged, the OA would inform the Board forthwith, alongwith their views/recommendations regarding further appropriate order(s) according to law, without holding any further hearing.

19. In case, the company wants to submit a rehabilitation scheme u/s 17(2) of SICA, the company should submit the draft scheme complying with the guidelines mentioned above except that there will be no operating agency/joint meeting. The company should also submit consent letters from the concerned agencies from whom reliefs are being envisaged. In case, such written consent are received from all concerned along with the draft scheme as aforesaid, BIFR may consider approving the scheme without circulation of the DRS for consent and without holding any hearing.

Check List for preparation of Draft Rehabilitation Scheme

Sl. No.	Subject	Tick	in	the
		Yes	No	NA
1.	Background of the company and products manufactured–when declared sick by BIFR – subsequent developments/ orders, if any, and compliance thereof.			
2.1	Cut-off date			
2.2	Share holding pattern as on_______			
2.3	Names of Directors			
3.	Reasons for sickness			
4.	Strategy to overcome the reasons for sickness and for revival – Availability of managerial and technical personnel – raw material–power-water-pollution control issues-marketing etc. If any Techno-Economic Viability study was done, brief details to be given			
5.1	Details of duesof secured creditors and settlement reached with them indicating the percentage at which they will be settled.			
5.2	Details of dues of unsecured creditors and how they will be settled (indicating percentage at which dues will be settled).			
5.3	Details of dues of workers and whether their written consent obtained for settlement.			
5.4	Details of statutory dues and how they will be settled.			
6.	In case of modified scheme, details of implementation of the scheme so far.			

7.	Financials			
7.1	Cost of scheme and Means of finance			
7.2	Past performance			
7.3	Whether projected balance sheet and profit and loss A/c attached			
7.4	Whether projected cash flow statement attached.			
7.5	Whether DSCR worked out (if there are any dues to be repaid – even other than Bank dues – over a period, DSCR should be worked out).			
8.	Capital Restructuring			
8.1	Whether any strategic investor (SI) is being brought in and OA has checked SI's background and found it satisfactory			
8.2	Any derating of equity – if so, details			
8.3	Details of infusion of funds/equity			
8.4	Price at which shares will be issued and present market value of the company's shares.			
8.5	Whether infusion of funds will result in change of management (COM); if so, the process adopted for COM			
9.	Sale of surplus assets, if any, proposed with details of the assets like machinery and extent of land and location.			

10.1	Details of reliefs sought with name and address of the agency concerned and whether the reliefs sought are within the policy guidelines of the concerned agency/Govt. (No relief under FEMA, Urban Land Ceiling Act and criminal proceedings should be included)			
10.2	Other terms and conditions			
11	Viability			
11.1	Date on which net worth will become positive			
11.2	Date on which accumulated losses will be wiped out (i.e. end of scheme period).			
12.	In case of merger whether resolutions passed by the shareholders meeting for merger. Audited Balance Sheet of the company with whom the sick company will be merged is to be enclosed. Net worth of both the companies to be stated. Basis of share exchange ratioisto be mentioned.			
13.	Date of Joint Meeting and whether minutes enclosed			
14.	In case of DRS u/s 17(2) whether consent of all agencies from whom relief is sought enclosed.			
15.	Details of court case, if any, pending			