Department of Industrial Policy and Promotion

Ministry of Commerce and Industry

Government of India

CONSOLIDATED FDI POLICY

(EFFECTIVE FROM OCTOBER 1, 2011)

www.taxguru.in

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
(FC Section)

CIRCULAR 2 OF 2011

SUBJECT: CONSOLIDATED FDI POLICY.

The "Consolidated FDI Policy" is attached.

2. This circular will take effect from October 1, 2011.

(Anjali Prasad)
Joint Secretary to the Government of India

D/o IPP F. No. 5(19)/2011-FC-I Dated 30.09.2011

Copy forwarded to:

1. Press Information Officer, Press Information Bureau- for giving wide publicity to the above circular.
2. BE Section for uploading the circular on DIPP's website.
3. Department of Economic Affairs, Ministry of Finance, New Delhi
4. Reserve Bank of India, Mumbai

www.taxguru.in

I N D E X

DESCRIPTION	PAGE NUMBER
CHAPTER-1 INTENT AND OBJECTIVE	**5**
1.1 Intent And Objective	**5**
CHAPTER-2 DEFINITIONS	**7**
2.1 Definitions	**7**
CHAPTER-3 GENERAL CONDITIONS ON FDI	**13**
3.1 Who can invest in India?	**13**
3.2. Entities into which FDI can be made	**14**
3.3 Types of Instruments	**16**
3.4 Issue/Transfer of Shares	**19**
3.5 Specific conditions in certain cases	**26**
3.6 Entry routes for Investment	**29**
3.7 Caps on Investments	**30**
3.8 Entry conditions on investment	**30**
3.9 Other conditions on Investment besides entry conditions	**31**
3.10 Foreign Investment into/Downstream Investment by Indian Companies	**31**
CHAPTER-4 CALCULATION OF FOREIGN INVESTMENT	**34**
4.1 Total Foreign Investment i.e. Direct and Indirect Foreign Investment in Indian Companies	**34**
CHAPTER-5 FOREIGN INVESTMENT PROMOTION BOARD (FIPB)	**38**
5.1 Constitution of FIPB	**38**
5.2 Levels of approval for cases under Government Route	**38**
5.3 Cases which do not require fresh Approval	**38**
5.4 Online filing of applications for FIPB/Government's approval	**39**
CHAPTER-6 SECTOR SPECIFIC CONDITIONS ON FDI	**40**
6.1 **PROHIBITED SECTORS**	**40**
6.2 **PERMITTED SECTORS**	**40**
AGRICULTURE	**41**
6.2.1 Agriculture & Animal Husbandry	**41**
6.2.2 Tea plantation	**43**
INDUSTRY	**43**
6.2.3 Mining	**43**
6.2.4 Petroleum & Natural Gas	**46**

www.taxguru.in

MANUFACTURING **46**
6.2.5 Manufacture of items reserved for production in Micro and Small Enterprises (MSEs) **46**
6.2.6 Defence **47**

SERVICES SECTOR **50**

6.2.7 Broadcasting **50**
6.2.8 Print Media **51**
6.2.9 Civil Aviation **52**
6.2.10 Courier Services **55**
6.2.11 Construction Development: Townships, Housing, Built-up infrastructure **55**
6.2.12 Industrial Parks new and existing **57**
6.2.13 Satellites – Establishment and operation **59**
6.2.14 Private Security Agencies **59**
6.2.15 Telecom Sector **59**
6.2.16 Trading **64**
FINANCIAL SERVICES **67**
6.2.17 Asset Reconstruction Companies **67**
6.2.18 Banking –Private sector **68**
6.2.19 Banking- Public Sector **71**
6.2.20 Commodity Exchanges **71**
6.2.21 Credit Information Companies (CIC) **73**
6.2.22 Infrastructure Company in the Securities Market **73**
6.2.23 Insurance **74**
6.2.24 Non-Banking Finance Companies (NBFC) **74**

CHAPTER-7 REMITTANCE, REPORTING AND VIOLATION **77**
7.1 Remittance and Repatriation **77**
7.2 Reporting of FDI **78**
7.3 Adherence to Guidelines/Orders and Consequences of Violation **81**
Penalties **81**
Adjudication and Appeals **81**
Compounding Proceedings **82**

ANNEXURES

Annex-1 Form FC-GPR **83**

Annex-2 Terms and conditions for transfer of capital instruments from resident to non-resident and vice-versa **90**

Annex-3 Documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift **94**

Annex-4 Definition of "relative" as given in Section 6 of Companies Act, 1956 **95**
Annex-5 Report by the Indian company receiving amount of consideration for issue of shares / convertible debentures under the FDI scheme **96**

www.taxguru.in

Annex-6 Know Your Customer (KYC) Form in respect of the non-resident investor **98**

Annex-7 Form Annual Return on Foreign Liabilities and Assets **99**

Annex-8 Form FC-TRS **112**

Annex-9 Form DR **117**

Annex-10 Form DR - Quarterly **119**

www.taxguru.in

CHAPTER 1: INTENT AND OBJECTIVE

1.1 INTENT AND OBJECTIVE

1.1.1 It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Foreign Direct Investment, as distinguished from portfolio investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

1.1.2 The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every six months, to capture and keep pace with the regulatory changes, effected in the interregnum. 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 amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. 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.

1.1.3 The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/ Circulars issued by DIPP, which were in force as on September 30, 2011, and reflects the FDI Policy as on October 1, 2011. This Circular accordingly will take effect from October 1, 2011. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

www.taxguru.in

1.1.4 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to October 1, 2011, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

www.taxguru.in

CHAPTER 2: DEFINITIONS

2.1 DEFINITIONS

2.1.1 'AD Category-I Bank' means a bank(Scheduled Commercial, State or Urban Cooperative) which is 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 : Warrants and partly paid shares can be issued to person/ (s) resident outside India only after approval through the Government route[1].

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 .

[1] Review of FDI policy to include warrants and partly-paid shares is under consideration of the Government.

www.taxguru.in

2.1.8 '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).

2.1.9 '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.

2.1.10 'Foreign Currency Convertible Bond'(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.

2.1.11 'FDI' means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 (Original notification is available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174. Subsequent amendment notifications are available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx)

www.taxguru.in

2.1.12 'FEMA' means the Foreign Exchange Management Act 1999 (42 of 1999) (http://finmin.nic.in/law/index.asp).

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

2.1.14 '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.

2.1.15 '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

2.1.16 'Government route' means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).

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

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

2.1.19 '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.

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

www.taxguru.in

2.1.21 '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.

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

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

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

2.1.25 A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;

2.1.26 'Person' includes

(i) an individual

(ii) a Hindu undivided family,

(iii) a company

(iv) a firm

(v) an association of persons or a body of individuals whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office, or branch owned or controlled by such person.

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

(i) he at any time held Indian Passport

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

www.taxguru.in

or

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

2.1.28 'Person resident in India' means -

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –

(A) A person who has gone out of India or who stays outside India, in either case-

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) A person who has come to or stays in India, in either case, otherwise than-

(a) for or on taking up employment in India; or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India.

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

2.1.30 'Portfolio Investment Scheme' means the Portfolio Investment Scheme referred to in Schedules 2 & 3 of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.

2.1.31 'RBI' means the Reserve Bank of India established under the Reserve Bank of India Act, 1934.

2.1.32 'Resident Entity' means 'Person resident in India' excluding an individual.

www.taxguru.in

2.1.33 'Resident Indian Citizen' shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.

2.1.34 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.

2.1.35 'SEZ' means a Special Economic Zone as defined in Special Economic Zone Act, 2005.

2.1.36 'SIA' means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.

2.1.37 'Transferable Development Rights' (TDR) means certificates issued in respect of 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.

2.1.38 '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.

2.1.39 "Limited Liability Partnership" means a Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.

www.taxguru.in

CHAPTER 3: GENERAL CONDITIONS ON FDI

3.1 WHO CAN INVEST 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 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 under the Portfolio Investment Scheme which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit for FII investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian Company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body. The aggregate FII investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.

(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 (**Annex-1**).

www.taxguru.in

(iii) A daily statement in respect of all transactions (except derivative trade) has to be submitted by the custodian bank in floppy / soft copy in the prescribed format directly to RBI.

3.1.5 Only SEBI registered FII and NRIs as per Schedules 2 and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.

3.1.6 A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian Venture Capital Undertaking (IVCU) and may also set up a domestic asset management company to manage the fund. All such investments can be made under the automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations.

3.2 ENTITIES INTO WHICH FDI CAN BE MADE

3.2.1 **FDI in an Indian Company:** Indian companies can issue capital against FDI.

3.2.2 **FDI in Partnership Firm / Proprietary Concern:**

(i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in 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.

www.taxguru.in

(ii) Investments with repatriation option**:** NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. 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 in 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 or print media.

3.2.3 **FDI in Venture Capital Fund (VCF)**: FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs) /Venture Capital Funds (VCFs) /other companies, as stated in paragraph 3.1.6 of this Circular. If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF subject to approval of the FIPB. However, if a domestic VCF is set-up as an incorporated company under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms, etc.

3.2.4 **FDI in Trusts:** FDI in Trusts other than VCF is not permitted.

3.2.5 **FDI in Limited Liability Partnerships (LLPs)**: FDI in LLPs is permitted, subject to the following conditions:

(a) FDI will be allowed, through the Government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).

(b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

www.taxguru.in

(c) An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

(d) LLPs with FDI will not be eligible to make any downstream investments.

(e) Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.

(f) Investment in LLPs by Foreign Institutional Investors (FIls) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).

(g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.

(h) For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

(i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations are met and with the prior approval of FIPB/Government.

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

3.3 TYPES OF INSTRUMENTS.

3.3.1 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 price/ conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower

www.taxguru.in

than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations [the DCF method of valuation for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies].

3.3.2 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.

3.3.2.1 Only equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares, with no in-built options of any type, would qualify as eligible instruments for FDI. Equity instruments issued/transferred to non-residents having in-built options or supported by options sold by third parties would lose their equity character and such instruments would have to comply with the extant ECB guidelines.

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

3.3.4 **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.

www.taxguru.in

(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.

www.taxguru.in

(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.

3.3.5 (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.

3.4 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 received through normal banking channels including escrow account opened and maintained for the purpose 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

www.taxguru.in

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** – Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than -

a. the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognised stock exchange in India;
b. the fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognised stock exchange in India ; and
c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

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 (relating to sectoral caps and entry routes), applicable laws and other conditionalities including security conditions, non-resident 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.

www.taxguru.in

(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, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the guidelines given in **Annex-2**.

(f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in **Annex-2**.

(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, Asset Reconstruction Companies (ARCs), Credit Information Companies (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.

www.taxguru.in

(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. AD Category-I banks have also been permitted to open and maintain, without prior approval of RBI, **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions specified by RBI. SEBI authorised Depository Participants have also been permitted to open and maintain, without prior approval of RBI, Escrow accounts for securities subject to the terms and conditions as specified by RBI. In both cases, the Escrow agent shall necessarily be an AD Category- I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non-residents.

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 (ARCs), Credit Information Companies (CICs), Insurance companies, infrastructure companies in

www.taxguru.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 Government 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.

(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 documents mentioned in **Annex-3** 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.

www.taxguru.in

(d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time. The current list is reproduced in **Annex-4**.

(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 equity shares/fully compulsorily and mandatorily convertible 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 the provision of para 3.4.2 above;

(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, subject to entry route, sectoral cap and pricing guidelines (as per the provision of para 3.4.2 above) and compliance with applicable tax laws.

(iii) Issue of equity shares under the FDI policy is allowed under the Government route for the following:

www.taxguru.in

(I) import of capital goods/ machinery/ equipment (including second-hand machinery), subject to compliance with the following conditions:

(a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/ Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.

(b) There is an independent valuation of the capital goods/machinery/equipments (including second-hand machinery) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents/certificates issued by the customs authorities towards assessment of the fair-value of such imports.

(c) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.

(d) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.

(II) pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:

(a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.

(b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.

(c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.

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

General conditions:

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

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

www.taxguru.in

3.5 SPECIFIC CONDITIONS IN CERTAIN CASES

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 offer on right basis to the persons resident outside India shall be:

(a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

(b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made 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

www.taxguru.in

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 (plain paper reporting) the details of granting of stock options under the scheme to non-resident employees to the Regional Office concerned of the Reserve Bank and thereafter the details of issue of shares subsequent to the exercise of such stock options within 30 days from the date of issue of shares in Form FC-GPR.

3.5.6 **Share Swap**: In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.

3.5.7 Pledge of Shares:

www.taxguru.in

(A) A person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowings, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer. The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that :

i). the loan agreement has been signed by both the lender and the borrower,

ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and

iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank:

and the said pledge would be subject to the following conditions :

a). the period of such pledge shall be co-terminus with the maturity of the underlying ECB;

b). in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;

c). the Statutory Auditor has certified that the borrowing company will utilized / has utilized the proceeds of the ECB for the permitted end use/s only.

(B) Non-resident holding shares of an Indian company, can pledge these shares in favour of the AD bank in India to secure credit facilities being extended to the resident investee company for bonafide business purpose, subject to the following conditions:

(i) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;

(ii) submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;

(iii) the Indian company has to follow the relevant SEBI disclosure norms; and

(iv) pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.

(C) Non-resident holding shares of an Indian company, can pledge these shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-

www.taxguru.in

resident promoter of the Indian company or its overseas group company, subject to the following:

(i) loan is availed of only from an overseas bank;

(ii) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;

(iii)overseas investment should not result in any capital inflow into India;

(iv)in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and

(v) submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

3.6 ENTRY ROUTES FOR INVESTMENT:

3.6.1 Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by FIPB.

3.6.2 **Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors with caps:**

In sectors/activities 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:

www.taxguru.in

(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 to 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.

3.7 CAPS ON INVESTMENTS

3.7.1 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 specified in the FDI policy. The caps in various sector(s) are detailed in Chapter 6 of this circular.

3.8 ENTRY CONDITIONS ON INVESTMENT

3.8.1 Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum

www.taxguru.in

capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 6 of this circular.

3.9 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS

3.9.1 Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/ local laws/ regulations.

3.10 FOREIGN INVESTMENT INTO/ DOWNSTREAM INVESTMENT BY INDIAN COMPANIES

3.10.1 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 Paragraph 4.1.

3.10.2 For the purpose of this chapter,

(i) 'Downstream investment' means indirect foreign investment, by one Indian company, into another Indian company, by way of subscription or acquisition, in terms of Paragraph 4.1. Paragraph 4.1.3 provides the guidelines for calculation of indirect foreign investment, with conditions specified in paragraph 4.1.3 (v).

(ii) 'Foreign Investment' would have the same meaning as in Paragraph 4.1

3.10.3 **Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies (regardless of its ownership or control):**

3.10.3.1 Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in paragraph 6.2.24 of this Circular.

www.taxguru.in

3.10.3.2 Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

3.10.3.3 For infusion of foreign investment into an Indian company which does not have any operations and also does 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 a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Note: Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

3.10.4 **Downstream investment by an Indian company which is owned and/or controlled by non resident entity/ies:**

3.10.4.1 Downstream investment by an Indian company, which is owned and/ or controlled by non-resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

3.10.4.2 Downstream investments by Indian companies will be subject to the following conditions:

(i) Such a company is to notify SIA, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com 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 as also a shareholders Agreement, if any;

(iii) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

www.taxguru.in

(iv) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.10.3 and 3.10.4.1.

www.taxguru.in

CHAPTER 4: CALCULATION OF FOREIGN INVESTMENT

4.1 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 FEM (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

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

www.taxguru.in

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 subsidiary 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.

www.taxguru.in

(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 approval of 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

www.taxguru.in

(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)(A) 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 methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or rule 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.

www.taxguru.in

CHAPTER 5: FOREIGN INVESTMENT PROMOTION BOARD (FIPB)

5.1 CONSTITUTION OF FIPB:

5.1.1 FIPB comprises of the following 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.

5.1.2 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.

5.2 LEVELS OF APPROVALS FOR CASES UNDER GOVERNMENT ROUTE

5.2.1 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.

5.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 1200 crore would be placed for consideration of CCEA.

5.2.3 The CCEA would also consider the proposals which may be referred to it by the FIPB/ the Minister of Finance (in-charge of FIPB).

5.3 CASES WHICH DO NOT REQUIRE FRESH APPROVAL

5.3.1 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:

www.taxguru.in

(i) Entities the activities of which had earlier required prior approval of FIPB/CCFI/CCEA and which 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) Entities the activities of which had sectoral caps earlier and which 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) 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.

5.4 ONLINE FILING OF APPLICATIONS FOR FIPB /GOVERNMENT'S APPROVAL

5.4.1 Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at FIPB's website (http://finmin.nic.in/) and (http://www.fipbindia.com).

www.taxguru.in

CHAPTER 6: SECTOR SPECIFIC CONDITIONS ON FDI

6.1 PROHIBITED SECTORS.

FDI is prohibited in:

(a) Retail Trading (except single brand product retailing)

(b) Lottery Business including Government /private lottery, online lotteries, etc.

(c) Gambling and Betting including casinos etc.

(d) Chit funds

(e) Nidhi company

(f) Trading in Transferable Development Rights (TDRs)

(g) Real Estate Business or Construction of Farm Houses

(h) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

(i) Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

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

6.2 PERMITTED SECTORS

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/ regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted upto 100% on the automatic route, subject to applicable laws/ regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement;

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
AGRICULTURE			
6.2.1	**Agriculture & Animal Husbandry**		
	a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and production of Seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and d) services related to agro and allied sectors **Note: Besides the above, FDI is not allowed in any other agricultural sector/activity**	100%	Automatic
6.2.1.1	**Other conditions**:		
	I. 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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM). (v) Import of materials shall be in accordance with National Seeds Policy. II. The term "under controlled conditions" covers the following: ❖ 'Cultivation under controlled conditions' for the categories of Floriculture, Horticulture, Cultivation of vegetables and Mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically. ❖ In case of Animal Husbandry, scope of the term 'under controlled conditions' covers – o Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems. o Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc. ❖ In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers – o Aquariums o Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control. ❖ In the case of apiculture, scope of the term 'under controlled		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	conditions' covers – o Prodution of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.		
6.2.2	**Tea Plantation**		
6.2.2.1	Tea sector including tea plantations **Note: Besides the above, FDI is not allowed in any other plantation sector/activity**	100%	Government
6.2.2.2	**Other conditions**:		
	(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.		
6.2.3	**MINING**		
6.2.3.1	**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.	100%	Automatic
6.2.3.2	**Coal and Lignite**		
	(1) 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	100%	Automatic
	(2) Setting up coal processing plants like washeries **subject to** the	100%	Automatic

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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.		
6.2.3.3	**Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities**		
6.2.3.3.1	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)	100%	Government
6.2.3.3.2	**Other conditions**:		
	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. 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 6th October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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). 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". (i) 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. (ii) 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. Clarification: (1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product. (2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.		
6.2.4	**Petroleum & Natural Gas**		
6.2.4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, **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	100%	Automatic
6.2.4.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Government
	MANUFACTURING		
6.2.5	**Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)**		
6.2.5.1	FDI in MSEs will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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 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 Industries (Development & Regulation) Act 1951.		
6.2.6	**DEFENCE**		
6.2.6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act 1951	26%	Government
6.2.6.2	**Other 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) The applicant should be an Indian company / partnership firm. (iii)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. (iv) Full particulars of the Directors and the Chief Executives should be furnished along with the applications. (v) The Government reserves the right to verify the antecedents of the		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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. (vi) 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 non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured. (vii) There would be a three-year lock-in period for transfer of equity from one non-resident investor to another non-resident investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the Government. (viii) 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. (ix)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. (x) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted. (xi) 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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	agencies. (xii) 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. (xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises. (xiv) 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.		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(xv) 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.		
SERVICES SECTOR			
INFORMATION SERVICES			
6.2.7	**Broadcasting**		
6.2.7.1	**Terrestrial Broadcasting FM (FM Radio) 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	26% (FDI, NRI & PIO investments and portfolio investment)	Government
6.2.7.2	**Cable Network, subject to** Cable Television Network Rules, 1994 and other conditions as specified from time to time by Ministry of Information and Broadcasting	49% (FDI, NRI & PIO investments and portfolio investment)	Government
6.2.7.3	**Direct–to-Home subject to** such guidelines/terms and conditions as specified from time to time by Ministry of Information and Broadcasting	49% (FDI, NRI & PIO investments and portfolio investment) **Within this limit, FDI component not to exceed 20%**	Government
6.2.7.4	**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.		
6.2.7.4.1	**FDI limit in (HITS) Broadcasting Service is subject to** such guidelines/terms and conditions as specified from time to time by Ministry of Information and	74% (total direct and indirect foreign investment including portfolio and FDI)	Automatic up to 49% Government route beyond

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	Broadcasting.		49% and up to 74%
6.2.7.5	**Setting up hardware facilities such as up-linking, HUB etc.**		
	(1) Setting up of Up-linking HUB/ Teleports	49% (FDI & FII)	Government
	(2) Up-linking a Non-News & Current Affairs TV Channel	100%	Government
	(3) 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	26% (FDI & FII)	Government
6.2.7.5.1	**Other conditions:**		
	(i) All the activities at (1), (2) and (3) 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. (ii) 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.		
6.2.8	**Print Media**		
6.2.8.1	Publishing of Newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
6.2.8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
6.2.8.2.1	**Other Conditions:**		
	(i) '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. (ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008.		
6.2.8.3	Publishing/printing of Scientific and Technical Magazines/specialty journals/ periodicals, **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.	100%	Government
6.2.8.4	Publication of facsimile edition of foreign newspapers	100%	Government
6.2.8.4.1	**Other Conditions:**		
	(i) FDI should be made 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.		
6.2.9	**CIVIL AVIATION**		
6.2.9.1	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. For the purposes of the Civil Aviation sector: (i) "Airport" means a landing and taking off area for aircrafts, usually with		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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 Cargo airlines; (ix)“Cargo airlines” would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(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.		
6.2.9.2	**Airports**		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic up to 74% Government route beyond 74%
6.2.9.3	**Air Transport Services**		
	(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, 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 and Non-Scheduled Air Transport Services except Cargo airlines. (c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.		
	(1) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
			74%
	(3) Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
6.2.9.4	**Other services under Civil Aviation sector**		
	(1) Ground Handling Services **subject to** sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
6.2.10	**Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.**	100%	Government
6.2.11	**Construction Development: Townships, Housing, Built-up infrastructure**		
6.2.11.1	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)	100%	Automatic
6.2.11.2	Investment will be subject to the following conditions: (1) 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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(iii)In case of a combination project, any one of the above two conditions would suffice (2) 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. (3) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. Original investment means the entire amount brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each installment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB. (4) 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) 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. (6) The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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. (7) The State Government/ Municipal/ Local Body concerned, which approves the building / development plans, would monitor compliance of the above conditions by the developer. Note: (i) The conditions at (1) to (4) above would not apply to Hotels & Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs. (ii) FDI is not allowed in Real Estate Business.		
6.2.12	**Industrial Parks – new and existing**	**100%**	**Automatic**
6.2.12.1	(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,		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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; basic and applied R&D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.		
6.2.12.2	FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 6.2.11 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;		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.		
6.2.13	**Satellites – Establishment and operation**		
6.2.13.1	Satellites – Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government
6.2.14	**Private Security Agencies**	49 %	Government
6.2.15	**Telecom Services** Investment caps and other conditions for specified services are given below. However, licensing and security requirements notified by the Department of Telecommunications will need to be complied with for all services.		
6.2.15.1	**(i) Telecom services**	74%	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.15.1.1	**Other conditions**:		
	(1) **General 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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	entity. In any case, the `Indian' shareholding will not be less than 26 percent. (iii) 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. (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.		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(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.		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(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 Ministry of Home Affairs. (xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time. (xiii) The licensee company is not allowed to use remote access facility for monitoring of content. (xiv) Suitable technical device should be made available at Indian end to the designated security agency /licensor in which a mirror image of the remote access information is available on line for monitoring purposes. (xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor. (xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location. (xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems. (xviii) It shall be open to the licensor to restrict the Licensee Company		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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. (3) The above General Conditions and Security Conditions shall also be applicable to the companies operating telecom service(s) with the FDI cap of 49%. (4) All the telecom service providers shall submit a compliance report on the aforesaid conditions to the licensor on 1st day of July and January on six monthly basis.		
6.2.15.2	(a) ISP with gateways (b) ISP's not providing gateways i.e. without gate-ways (both for satellite	74%	Automatic up to 49% Government route beyond 49% and up to

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	and marine cables) **Note**: The new guidelines of August 24, 2007 Department of Telecommunications provide for new ISP licenses with FDI up to 74%. (c) Radio paging (d) End-to-End bandwidth		74%
6.2.15.3	(a) Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I) (b)Electronic Mail (c) Voice Mail **Note:** Investment in all the above activities is subject to the conditions 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.	100%	Automatic up to 49% Government route beyond 49%
6.2.16	**TRADING**		
6.2.16.1	**(i) Cash & Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)**	100%	Automatic
6.2.16.1.1	**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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.		
6.2.16.1.2	**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**		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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 (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.		
6.2.16.2	**E-commerce activities**	100%	Automatic
6.2.16.2.1	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.		
6.2.16.3	**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.	100%	Government
6.2.16.4	**Single Brand product trading**	51%	Government
	(1) Foreign Investment in Single Brand product trading is 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.		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(2) FDI in Single Brand products retail trade 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. (d) The foreign investor should be the owner of the brand. (3) 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. (4) 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		
	FINANCIAL SERVICES Foreign investment in other financial services , other than those indicated below, would require prior approval of the Government:		
6.2.17	**Asset Reconstruction Companies**		
6.2.17.1	'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	49% of paid-up capital of ARC	Government

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	and Enforcement of Security Interest Act, 2002 (SARFAESI Act).		
6.2.17.2	**Other conditions:**		
	(i) Persons resident outside India, other than Foreign Institutional Investors (FIIs), can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank only under the Government Route. Such investments have to be strictly in the nature of FDI. Investments by FIIs are not permitted in the equity capital of ARCs. (ii) However, FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest up to 49 per cent of each tranche of scheme of SRs, subject to the condition that investment by a single FII in each tranche of SRs shall not exceed 10 per cent of the issue. (iii)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.		
6.2.18	**Banking –Private sector**		
6.2.18.1	Banking –Private sector	74% including investment by FIIs	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.18.2	**Other conditions:**		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(1) This 74% limit will include 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. (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. (3) The stipulations as above will be applicable to all investments in existing private sector banks also. (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 in private banks having		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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 Government as per para 3.6.2 above as applicable. (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 non-resident 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		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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.		
6.2.19	**Banking- Public Sector**		
6.2.19.1	Banking- Public Sector **subject to** Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20% (FDI and Portfolio Investment)	Government
6.2.20	**Commodity Exchanges**		
6.2.20.1	1 Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	technology, it was decided to allow foreign investment in Commodity Exchanges. 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.		
6.2.20.2	**Policy for FDI in Commodity Exchange**	49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme	Government

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
		limited to 26%]	
6.2.20.3	**Other conditions:**		
	(i) FII purchases shall be restricted to secondary market only and (ii) No non-resident investor/ entity, including persons acting in concert, will hold more than 5% of the equity in these companies.		
6.2.21	**Credit Information Companies (CIC)**		
6.2.21.1	Credit Information Companies	49% (FDI & FII)	Government
6.2.21.2	**Other Conditions:**		
	(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005. (2) Foreign investment is permitted under the Government route, subject to regulatory clearance from RBI. (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. (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.		
6.2.22	**Infrastructure Company in the Securities Market**		
6.2.22.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Government (For FDI)
6.2.22.2	**Other Conditions:**		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
6.2.22.2.1	FII can invest only through purchases in the secondary market		
6.2.23	**Insurance**		
6.2.23.1	Insurance	26%	Automatic
6.2.23.2	**Other Conditions:**		
	(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1999, is allowed under the automatic route. (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.		
6.2.24	**Non-Banking Finance Companies (NBFC)**		
6.2.24.1	Foreign investment in NBFC is allowed under the automatic route in only 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	100%	Automatic

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	(xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit		
6.2.24.2	**Other Conditions:**		
	(1) Investment would be subject to the following minimum capitalisation norms: (i) US $0.5 million for foreign capital up to 51% to be brought upfront (ii) US $ 5 million for foreign capital more than 51% and up to 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 the number of operating subsidiaries and without bringing in additional capital. **The minimum capitalization condition as mandated by para 3.10.4.1, therefore, shall not apply to downstream subsidiaries.** (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 to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of		

www.taxguru.in

Sl.No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
	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. **Note:** 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. (2) The NBFC will have to comply with the guidelines of the relevant regulator/ s, as applicable		

www.taxguru.in

CHAPTER 7: REMITTANCE, REPORTING AND VIOLATION

7.1 REMITTANCE AND REPATRIATION

7.1.1 **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.

www.taxguru.in

7.1.2 **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.

7.1.3 **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.

7.2. REPORTING OF FDI

7.2.1 **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 enclosed as **Annex-5**.

(ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category-I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as **Annex-6**) 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.

7.2.2 **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, enclosed in **Annex-1**, not later than 30 days from the date of issue of shares.

(ii) 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

www.taxguru.in

the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:

(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) Annual return on Foreign Liabilities and Assets **(Annex 7)** should be filed on an annual basis by the Indian company, directly with the Reserve Bank. 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 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.

www.taxguru.in

7.2.3 **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 (**Annex 8**). 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.

7.2.4 **Reporting of Non-Cash**

Details of issue of shares against conversion of ECB have 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.

7.2.5 **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 Form enclosed as **Annex 9**, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the Form enclosed as **Annex 10**, 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.

www.taxguru.in

7.3 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.

7.3.1 **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.

7.3.2 **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

www.taxguru.in

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 Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.

7.3.3 **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.

www.taxguru.in

Annex – 1

FC-GPR

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

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	
Date of issue of shares / convertible debentures	

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

www.taxguru.in

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

4	**Particulars of Shares / Convertible Debentures Issued**

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

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

www.taxguru.in

(a) **Nature and date of issue**

	Nature of issue	*Date of issue*	*Number of shares/ convertible debentures*
01	IPO / FPO		
02	Preferential allotment / private placement		
03	Rights		
04	Bonus		
05	Conversion of ECB		
06	Conversion of royalty (including lump sum payments)		
07	Conversion against import of capital goods by units in SEZ		
08	ESOPs		
09	Share Swap		
10	Others (please specify)		
	Total		

(b) **Type of security issued**

No.	Nature of security	Number	Maturity	Face value	Premium	Issue Price per share	Amount of inflow*
01	Equity						
02	Compulsorily Convertible Debentures						
03	Compulsorily Convertible Preference shares						
04	Others (please specify)						
	Total						

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

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

[@] ***please specify the nature***

(d)	**Total inflow** (in Rupees) on account of issue of shares / convertible debentures to non-residents (including premium, if any) vide	

www.taxguru.in

	(i) Remittance through AD: (ii) Debit to NRE/FCNR A/c with Bank_____ (iii) Others (please specify) Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Schedule I to Notification No. FEMA 20 /2000-RB dated May 3, 2000, as amended from time to time.	
(e)	**Disclosure of fair value of shares issued****	
	We are a listed company and the market value of a share as on date of the issue is*	
	We are an un-listed company and the fair value of a share is*	

** ***before issue of shares*** ****(Please indicate as applicable)***

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

www.taxguru.in

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

We hereby declare that:

1. We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

2. The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfill all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).

~~a) Foreign entity/entities—(other than individuals), to whom we have issued shares have existing joint venture or technology transfer or trade mark agreement in India in the same field and Conditions stipulated at Para 4.2 of Consolidated FDI policy Circular of Government of India have been complied with.~~

OR

Foreign entity/entities—(other than individuals), to whom we have issued shares do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field. For the purpose of the 'same' field, 4 digit NIC 1987 code would be relevant.

b) We are not an Industrial Undertaking manufacturing items reserved for small sector.

OR

We are an Industrial Undertaking manufacturing items reserved for small sector and the investment limit of 24 % of paid-up capital has been observed/ requisite approvals have been obtained.

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

OR

Shares issued are bonus.

OR

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

OR

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

www.taxguru.in

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

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

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

(ii) A certificate from Statutory Auditors / SEBI registered Category I Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

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

R														

.
.
.

R														

(Signature of the Applicant)* :_____

(Name in Block Letters) :_____

(Designation of the signatory) :_____

Place:

Date:

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

www.taxguru.in

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY[3] OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT:

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

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

1. All the requirements of the Companies Act, 1956 have been complied with.
2. Terms and conditions of the Government approval, if any, have been complied with.
3. The company is eligible to issue shares / convertible debentures under these Regulations.
4. The company has all original certificates issued by AD Category-I banks in India, evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(Name & Signature of the Company Secretary) (Seal)

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FC-GPR:

Unique Identification Number allotted to the Company at the time of reporting receipt of remittance

R													

[3] If the company doesn't have a full time Company Secretary, a certificate from a practicing Company Secretary may be submitted.

www.taxguru.in

Annex - 2

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

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

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

2. Pricing Guidelines

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

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

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

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

Price of shares transferred by way of sale by resident to a non-resident where the shares of an Indian company are:

(a) listed on a recognized stock exchange in India ,shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines , as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date pf purchase or sale of shares,

(b) not listed on a recognized stock exchange in India ,shall not be less than the fair value to be determined by a SEBI registered Category I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method.

The price per share arrived at should be certified by a SEBI registered Category I Merchant Banker or a Chartered Accountant.

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

www.taxguru.in

Sale of shares by a non-resident to resident shall be in accordance with Regulation 10 B (2) of Notification No. FEMA 20/2000-RB dated May 3, 2000 which shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given at para 2.2 above.

3. Responsibilities / Obligations of the parties

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

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

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

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

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

5. Documentation

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

5.1 For sale of shares by a person resident in India

i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee

www.taxguru.in

company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.

ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.

iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.

iv. Certificate indicating fair value of shares from a Chartered Accountant.

v. Copy of Broker's note if sale is made on Stock Exchange

vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/ convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.

vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

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

i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.

ii. Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.

iii. If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable.

iv. Certificate indicating fair value of shares from a Chartered Accountant.

v. No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Account.

vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

6. Reporting requirements

6.1 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

www.taxguru.in

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 Forms and submit a monthly report to the Reserve Bank[4].

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

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

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

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

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

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

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

□□□□□□□□□□□□□□□□□□□□

[4] To the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

www.taxguru.in

Annex- 3

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

i. Name and address of the transferor (donor) and the transferee (donee).

ii. Relationship between the transferor and the transferee.

iii. Reasons for making the gift.

iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.

v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.

vi. In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India or DCF method for listed companies and unlisted companies, respectively.

vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/ convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.

viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year**.

www.taxguru.in

Annex - 4

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

A person shall be deemed to be a relative of another, if, and only if:

(a) they are members of a Hindu undivided family ; or

(b) they are husband and wife ; or

(c) the one is related to the other in the manner indicated in Schedule IA (as under)

1. Father.
2. Mother (including step-mother).
3. Son (including stepson).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

****

www.taxguru.in

Annex - 5

Report by the Indian company receiving amount of consideration for issue of shares / Convertible debentures under the FDI Scheme

(To be filed by the company through its Authorised Dealer Category-I bank, with the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the company making the declaration is situated, not later than 30 days from the date of receipt of the amount of consideration, as specified in para 9 (I) (A) of Schedule I to Notification No. FEMA 20/2000- RB dated May 3, 2000)

Permanent Account Number (PAN) of the investee company given by the IT Department	

No.	Particulars	(In Block Letters)
1.	Name of the Indian company Address of the Registered Office	
	Fax	
	Telephone	
	e-mail	
2	**Details of the foreign investor/ collaborator**	
	Name Address Country	
3.	Date of receipt of funds	
4.	Amount	In foreign currency / In Indian Rupees
5.	Whether investment is under Automatic Route or Approval Route If Approval Route, give details (ref. no. of approval and date)	Automatic Route / Approval Route

www.taxguru.in

6.	Name of the AD through whom the remittance is received	
7.	Address of the AD	

A Copy of the FIRC evidencing the receipt of consideration for issue of shares/ convertible debentures as above is enclosed.

(Authorised signatory of the investee company) (Stamp)	(Authorised signatory of the AD) (Stamp)

FOR USE OF THE RESERVE BANK ONLY:

Unique Identification Number for the remittance received: | | | | | | | | | | | | | | |

www.taxguru.in

Annex – 6

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

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

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

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

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

Date : Place:

Stamp :

www.taxguru.in

Annex – 7

Annual Return on Foreign Liabilities and Assets

(Return to be filled under A.P. (DIR Series) Circular No.45 dated March 15, 2011
to the Department of Statistics and Information Management, RBI, Mumbai)

Please read the guidelines/definitions carefully before filling-in the Return

Section I: Identification Particulars

For RBI's use

COMPANY CODE				

1. Name and Address of the Indian Company

_____

_____

_____

City: Pin:

State:_____

2. Income-Tax allotted PAN Number of Company:

3. Registration No given by the Registrar of Companies:

4. Name of the CONTACT PERSON : _____DESIGNATION:_____

Tel.No. (with STD code): _____Fax:_____
e-mail:_____

5. Account closing date: (dd/mm/yy) Web-site (if any):_____

6. In case of change in Company Name and\or activity, specify the old and new Company Name and activity:

Old Company Name :_____New Company Name _____
Effective Date _____
Old Activity:_____ New Activity _____

7. Nature of Business: Please tick (✓) the appropriate group of activity to which your principal line of business pertains and also mention, if possible, the NIC code in the bracket.

Industry	Revenue (%)	Industry	Revenue (%)	Industry	Revenue (%)	Industry	Revenue (%)
1. Power ( )		2. Electrical & Electronics		3. Non - financial services		4. Financial Services ( )	

www.taxguru.in

		( )		( )			
5.Telecom ( )		6. Hotels & Tourism ( )		7. Metallurgical Industry & Mining ( )		8. Food Processing Industry ( )	
9. Transportation ( )		10. Petroleum & Natural Gas ( )		11. Chemicals (other than fertilizers) ( )		12. Construction ( )	
13. Software and ITES/BPO ( )		14. Pharmaceutical ( )		15. Other ( )			

For RBI's use (Industry Code)

8. Whether your company is listed in India [please tick (✓)]?

Yes		No	

9. Whether your company has any Foreign Collaboration?
If yes, please indicate whether it is (please tick the appropriate one)

Yes		No	

(a) Technical collaboration		(b) Financial collaboration (foreign equity participation)		(c) Both	

Block 1A : Total Paid up Capital of Indian Company

Item	End-March of previous FY		End-March current FY	
	Number of Shares	Amount in ` lakh	Number of Shares	Amount in ` lakh
1.0 Total Paid-up Capital [(i)+(ii)]				
(i) Ordinary/Equity Share				
(ii) Preference Share [(a)+(b)]				
(a) Participating				
(b) Non-participating				
2.0 Non-resident Equity Holdings				
1 Individuals				
2 Companies				
3 FIIs				
4 FVCIs				
5 Foreign Trusts				
6 Private Equity Funds				
7 Pension/ Provident Funds				

www.taxguru.in

8 Sovereign Wealth Fund (SWF)[§]				
9 Partnership/ Proprietorship firms				
10 Financial Institutions				
11 NRIs/PIO				
12 Others (please specify)				

Note: FY: Financial Year

Block 1B : Free Reserves & Surplus and Retained Profit

Item	**Amount in ` lakh as at the end – March of**	
	Previous FY	**Current FY**
3.1 Free Reserves & Surplus as at the end of		
	Amount in ` lakh	
	During Previous FY	**During Current FY**
3.2 Profit (+) / Loss (-) after tax		
3.3 Dividend Declared (excluding tax on dividend)		
3.4 Retained Profit / loss (3.4 = 3.2 -3.3)		

Section II

FOREIGN LIABILITIES

2. Investments made under Foreign Direct Investment (FDI) scheme in India:
In case of listed companies, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, Own Fund of Book Value (OFBV) Method should be used
(see the attached guidelines for details)

Block 2A: Foreign Direct Investment in India (10% or more Equity Participation)

[Please furnish here the outstanding investments *made under the FDI Scheme in India* by Non-resident Direct investors, who were individually holding **10 per cent or more** ordinary/equity shares of your company on the reporting date]

*If this block is **Non-NIL**, then please give the Name & Addresses of your subsidiary in India, if any,* in BLOCK 9.

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	**Equity holding (%)**	**Amount in ` lakh as at the end of**		
				March Previous FY	**December Current FY**	**March Current FY**
	1.0 Equity Capital (1.0 = 1.2-1.1)					
	1.1 Claims on Direct Investor					
	1.2 Liabilities to Direct Investor					
	2.0 Other Capital(2.0 = 2.2-2.1)					

www.taxguru.in

	2.1 Claims on Direct Investor					
	2.2 Liabilities to Direct Investor					
	3.0 Disinvestments in India during the year					

Note: (i) if investor is a company, then country is the country of incorporation;
(ii) Please use different sheet using same format to report different non-resident company/individual.

Block 2B: Foreign Direct Investment in India (Less than 10% Equity Holding)

[Please furnish here the outstanding investments *made under the FDI Scheme in India* by Non-resident Direct investors, who were individually holding **less than 10 per cent** ordinary/ equity shares of your company on the reporting date]

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	**Equity holding (%)**	**Amount in ` lakh as at the end of**		
				March Previous FY	**December Current FY**	**March Current FY**
	1.0 Equity Capital (1.0 = 1.2-1.1)					
	1.1 Claims on Direct Investor					
	1.2 Liabilities to Direct Investor					
	2.0 Other Capital(2.0 = 2.2-2.1)					
	2.1 Claims on Direct Investor					
	2.2 Liabilities to Direct Investor					
	3.0 Disinvestments in India during the year					

Note: (i) if investor is a company, then country is the country of incorporation;
(ii) Please use different sheet using same format to report different non-resident company/individual.

3. Portfolio and Other Liabilities to Non-residents (i.e. position with unrelated parties)

Block 3A: Portfolio Investment

Please furnish here the outstanding investments by non-resident investors made under the **Portfolio Investment Scheme in India**. In case of listed companies, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, Own Fund of Book Value (OFBV) Method should be used. *(see the attached guidelines for details)*

Portfolio Investment	**Country of non-resident investor**	**Amount in ` lakh as at the end of**	
		March Previous FY	**March Current FY**
1.0 Equity Securities			
2.0 Debt Securities(2.0 = 2.1+2.2)			
2.1 Bonds and Notes (original maturity more than 1year)			
2.2 Money Market Instruments (original maturity upto1year)			
3.0 Disinvestments in India during the year			

www.taxguru.in

Note: Data pertaining to each type of investment are to be reported consolidating the information country wise. If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

Block 3B: Financial Derivatives (with non-resident entities only)

Please furnish here the outstanding foreign liabilities on account of financial derivatives contract **entered into with non-residents**.

Financial Derivatives	Country of non-resident investor	**Amount in ` lakh as at the end of**	
		March Previous FY	**March Current FY**
(i) Notional Value			
(ii) Mark to market value			

Note: If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

Block 3C: Other Investments:

This is a residual category that includes all financial outstanding not considered as direct investment or portfolio investment (**outstanding liabilities with Unrelated Parties**)

Other Investment	Country of non-resident lender	**Amount in ` lakh as at the end of**	
		March Previous FY	**March Current FY**
4.0 Trade Credit (4.0 = 4.1+4.2)			
4.1 Short Term (4.1= 4.1.1+4.1.2)			
4.1.1. Up to 6 Months			
4.1.2. 6 Months to 1 Year			
4.2. Long Term			
5.0 Loans (5.0 = 5.1+5.2)			
5.1 Short Term			
5.2 Long Term			
6.0 Other Liabilities (6.0 = 6.1+6.2)			
6.1 Short Term (Up to 1 yr.)			
6.2 Long Term			

Note: (i) Data pertaining to each type of investment are to be reported consolidating the information country wise. If more countries are involved to report the data for the particular type(s) of investment, it should be reported in the same format using additional sheets separately for each country.

(ii) At item 5.0, loan should include the ECB loan other than those taken from non-resident parent company. ECB loan taken from parent company abroad should be shown under Other Capital of Block 2A.

Section –III

FOREIGN ASSETS

1. Please use the **exchange rate as at end-March/end-December** (as applicable) of reporting year while reporting the **foreign assets in ` lakh**.

www.taxguru.in

2. In case, the overseas company is listed, equity should be valued using share price on closing date of reference period, while in case of unlisted company, use Own Fund of Book Value (OFBV) method for valuation of equity *(see the attached guidelines for details)*

Block 4: Direct Investment Abroad under Overseas Direct Investment Scheme

Block 4A: Direct Investment Abroad (10 % or more Equity holding)

[Please furnish here your outstanding investments in Non-resident enterprises [Direct Investment Enterprises (DIE)], **made under the Overseas Direct Investment Scheme**, in each of which **your company** hold **10 per cent or more** Equity shares on the reporting date]. *If this block is **Non-NIL**, then please furnish the information* in BLOCK 6.

Name of the non-resident Direct Investment Enterprise (DIE)	Type of Capital	Country of non-resident DIE	**Equity holding (%)**	**Amount in ` lakh as at the end of**		
				March Previous FY	**December Current FY**	**March Current FY**
	1.0 Equity Capital (1.0 = 1.1-1.2)					
	1.1 Claims on Direct Investment Enterprise					
	1.2 Liabilities to Direct Investment Enterprise					
	2.0 Other Capital(2.0 = 2.1-2.2)					
	2.1 Claims on Direct Investment Enterprise					
	2.2 Liabilities to Direct Investment Enterprise					
	3.0 Disinvestments made abroad during the year					

Note: Please use separate sheets in the above format to report for separate DIEs

Block 4B: Foreign Direct Investment Abroad (Less than 10 % Equity holding)

[Please furnish here your outstanding investments in non-resident enterprises (Direct Investment Enterprises DIE), **made under the Overseas Direct Investment Scheme**, in each of which **your company holds less than 10 per cent** Equity shares on the reporting date].

Name of the non-resident enterprises	Type of Capital	Country of non-resident enterprises	**Amount in ` lakh as at the end of**		
			March Previous FY	**December Current FY**	**March Current FY**
	1.0 Equity Capital (1.0 = 1.1-1.2)				
	1.1 Claims on non-resident Enterprise abroad				
	1.2 Liabilities to non-resident Enterprise abroad				
	2.0 Other Capital (2.0 = 2.1-2.2)				
	2.1 Claims on non-resident Enterprise abroad				
	2.2 Liabilities to non-resident Enterprise abroad				
	3.0 Disinvestments made abroad during the year				

www.taxguru.in

Note: **Please use separate sheets in the above format to report different non-resident fellow enterprises.**

Portfolio and Other Assets Abroad (*i.e.*, position with unrelated parties)

Block 5A: Portfolio Investment Abroad

1. Please furnish here the outstanding investments in non-resident enterprises, **other than those made under Overseas Direct Investment Scheme** in India (*i.e.*, other than those reported in Block 4A & 4B).
2. In case overseas companies are listed, equity should be valued using share price on closing date of reference period, while in case of unlisted companies, use Own Fund of Book Value Method (OFBV) *(see the attached guidelines for details)*

Portfolio Investment	Country of non-resident enterprise	**Amount in ` lakh as at the end of**		
		March Previous FY	**December Current FY**	**March Current FY**
1.0 Equity Securities				
2.0 Debt Securities (2.0=2.1+2.2)				
2.1 Bonds and Notes (original maturity more than 1year)				
2.2 Money Market Instruments (original maturity up to 1year)				
3.0 Disinvestments Abroad during the year				

Note: Data pertaining to each type of investment are to be reported consolidating the information country wise. If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 5B: Financial Derivatives (with non-resident entities only)

Please furnish here the outstanding claims on non-residents on account of financial derivatives contract **entered into with Non-residents**.

Financial Derivatives	Country of non-resident enterprise	**Amount in ` lakh as at the end of**	
		March Previous FY	**March Current FY**
(i) Notional Value			
(ii) Mark to market value			

Note: If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 5C: Other Investment (Outstanding claims on Unrelated Parties):

This is a residual category that includes all financial outstanding claims not considered as direct investment or portfolio investment.

Other Investment	Country of non-resident enterprise	**Amount in ` lakh as at the end of**	
		March Previous FY	**March Current FY**
4.0 Trade Credit (4.0=4.1+4.2)			
4.1 Short Term (4.1=4.1.1+4.1.2)			
4.1.1. Up to 6 Months			
4.1.2. 6 Months to 1 Year			
4.2 Long Term			

www.taxguru.in

5.0 Loans (5.0=5.1+5.2)			
5.1 Short Term (Up to 1 year)			
5.2 Long Term			
6.0 Other Assets (6.0=6.1+6.2)			
6.1 Currency & Deposits			
6.2 Others			

Note: (i) Data pertaining to each type of investment are to be reported consolidating the information country wise. If particular type(s) of investment spreads over more than one country, it should be reported in the above format using separate additional sheet for each country.

Block 6: Equity Capital, Free Reserves & Surplus of Direct Investment Enterprise Abroad

[Please report here the total equity, the **equity held by your company** and the total free reserves & surplus of those non-resident enterprises in each of which **your company held 10 per cent or more** shares on the reporting date].
*If this block **is Non-NIL** then please make sure that you have provided the relevant information* in BLOCK 4A.

Name of the DIE	**Item**	Currency	**Amount in Foreign Currency as at the end of (in actual)**	
			March Previous FY	**March Current FY**
(1)	(2)	(3)	(4)	(5)
	1. Total Equity of DIE			
	2. Equity of DIE held by you			
	3. Free Reserves & Surplus of DIE			
	4. Dividend Received by you **during the year**			
	5. Amount of your Profit retained by DIE **during the year**			

Note: If your company is a Direct Investor in more than one DIE, the data should be provided in the same format in respect of each such DIE using additional sheets.

Block 7: Contingent Foreign Liabilities

[Please report here the relevant details about the contingent foreign liabilities of **your company**]

Description of Contingent Liability	**Country**	**Currency**[#]	**Amount in Foreign Currency as at the end of (in actual)**	
			March Previous FY	**March Current FY**
(1)	(2)	(3)	(4)	(5)

Note: # Currency of denomination of the contingent foreign liability should be mentioned in Col. 3. Refer to the details on Contingent liabilities given in Annex.

www.taxguru.in

Block 8: Employee Information of reporting Indian company

	As at the end-March of	
	Previous FY	**Current FY**
No. of Employees on Payroll		

BLOCK 9: Name(s) & Address (es) of your subsidiary in India

Sr. Nos.	Name of Subsidiary in India*	Your Equity holding in subsidiary %	Address	Retained profit/ loss of your subsidiary in India during the current FY (Amount in ` lakh)

Certificate

We hereby certify that all the facts and figures furnished in this schedule reflect the accurate position of the company and reported after understanding all the items of all the blocks of the schedule.

Place :

Signature and Name of the Authorised person

Date :

www.taxguru.in

Concepts & Definitions to be used while filling-in the Annual Return on Foreign Liabilities and Assets

Residence of Enterprises

An enterprise is said to have a center of economic interest and to be a resident unit of a country (economic territory) when the enterprise is engaged in a significant amount of production of goods and/or services there or when it owns land or buildings located there. The enterprise must maintain at least one production establishment in the country and must plan to operate the establishment indefinitely or over a long period of time.

Free Reserves and Surplus (Block 1B, Item 3.1)

Free Reserves and Surplus should **include** all unencumbered reserves such as
i) General Reserve net of losses, if any
ii) Capital Reserve
iii) Development Rebate Reserve
iv) Premium on shares
v) Dividend Equalization Reserve
vi) Investment Allowance **(utilized)** Reserve.

Free Reserves and Surplus should **exclude** Tax provisions and other items such as
i) provision for deferred taxation
ii) Tax Equalization Reserve
iii) Investment Allowance **(unutilized)** and
iv) Revaluation Reserve

Retained Profit (Block 1B, Item 3.4)
Retained profit = Profit after tax – Dividend declared (excluding tax on dividend)
(i.e. Item 3.4 = Item3.2 minus Item 3.3, of Block 1B)

A. Direct Investment:
Direct investment is a category of international investment in which a resident entity in one economy (direct investor (DI) acquires a lasting interest in an enterprise resident in another economy (Direct Investment Enterprise (DIE). It consists of two components, viz., Equity capital and Other Capital.

(i) Equity Capital under Direct Investment
It covers (1) Equity in branches and all shares (except non-participating preferred shares) in subsidiaries and associates; (2) Contributions such as the provision of machinery, land & building(s) by a direct investor to a DIE by equity participation; (3) Acquisition by a DIE of shares in its direct investor, termed as Reserve investment (i.e. claims on DI).

(a) Foreign Direct Investment in India (Block 2A, 2B)
If the Indian company has issued the shares to non-resident entities under the FDI scheme in India, then it should be reported under the Foreign Direct Investment in India (Liabilities), Section II of the return. If the non-resident entity **holds the 10 per cent or more** equity/ ordinary shares in the reporting Indian company, then it should reported under **Block 2A** (item 1.2, liabilities to direct investment). However, if the non-resident entity holds **less than 10 per cent**

www.taxguru.in

of the equity capital of reporting Indian company, then it should be reported under **Block 2B** (item 1.2, liabilities to direct investment). In both the cases, the investing non-resident entity is called as the Direct Investor (DI) while the reporting Indian company is called as Direct Investment Enterprise (DIE).
If the **reporting Indian company** also holds the **equity shares in its DI** company abroad and if its share is **less than 10 per cent** of equity capital of DI company, then it is called as **reverse investment** and same should be **reported under item 1.1** (claim on direct investor) of the respective block i.e. **Block 2A or 2B**.

(b) Foreign Direct Investment abroad by Indian companies (Block 4A and 4B)
If the reporting Indian company invest in equity shares of non-resident company, under the Overseas Direct Investment scheme in India, i.e. investment in Joint venture or Wholly owned subsidiaries abroad, then it should be reported under the Foreign Direct Investment abroad, Section III. If the equity holding of Indian company in non-resident company is **10 per cent or more**, then it should be reported under **Block 4A** (item 1.1 claim on DIE), **otherwise**, it should be reported under **Block 4B** (item 1.1, claim on DIE). In both the cases, Indian company is called as the Direct Investor (DI) while the non-resident company is called as Direct Investment Enterprise (DIE).

If the **non-resident DIE** also holds the **equity shares in Indian reporting company** (DI) and if its share is **less than 10 per cent** of equity capital of reporting company, then it is called as **reverse investment** and same should be reported **under item 1.2** (liabilities to DIE) of the respective block i.e. **Block 4A or 4B**.

(ii) Other Capital under Direct Investment (Block 2A, 2B, 4A and 4B)
The **other capital** (inter-company debt transactions) component of direct investment covers the outstanding liabilities or claims arising due **borrowing and lending of funds, investment in debt securities including non-participating preference shares, trade credits, financial leasing, share application money, between direct investors and DIEs and between two DIEs that share the same Direct Investor**. Non-participating preferred shares owned by the direct investor are treated as debt securities & should be included in Other Capital.

B. Portfolio Investment:
(i) Portfolio Investment (Block 3A & 5A)
It covers **external claims by or liabilities to reporting Indian company** in equity and debt securities **other than those included in direct investment** (Block 2A, 2B and 4A, 4B). Debt securities include long-term bonds and notes, short-term money market instruments.
Any investment is made **by the non-resident entities in Indian company** under the **Portfolio Scheme in India** should be should be reported under **Block 3A** (Portfolio liabilities).
Any investment made **by the Indian company** in foreign shares and / or debt securities, **apart from the investment made under the Overseas Direct Investment Scheme**, should be reported under **Block 5A** (Portfolio assets).
(ii) Equity Securities (Block 3A & 5A, Item 1.0)
Equity securities are instruments acknowledging the holders' claim to the residual income of the issuing enterprise after the claims of all creditors have been met. These include ordinary shares, stocks, participating preference shares, depository receipts (ADRs/GDRs) denoting ownership of

www.taxguru.in

equity securities issued to non-residents, shares/units in mutual funds & investment trusts, equity securities that are sold under repurchase agreement, equity securities that are sold under securities lending arrangement.

(iii) Debt Securities (Block 3A & 5A, Item 2.0)

These include bonds and notes, money market instruments.

(iv) Bonds and Notes (Block 3A & 5A, Item 2.1)

This category includes debt securities with original contractual maturities of more than one year (long-term). It includes the long-term securities such as Debentures, Non-participating preference shares, Convertible bonds, Negotiable certificates of deposit, Perpetual bonds, Collateralized mortgage obligations, Dual currency, Zero coupon and other Deep discounted bonds, Floating rate bonds and Index-linked bonds.

(v) Money Market Instruments (Block 3A & 5A, Item 2.2)

These short-term instruments include treasury bills, commercial paper, banker's acceptances, short-term negotiable certificates of deposit and short-term notes issued under note issuance facilities. It may be noted that the instruments that share the characteristics of money market instruments but are issued with maturities of more than one year are classified as Bonds and Notes.

C. Financial Derivatives (Block 3B and 5B)

Financial derivatives are linked to a specific financial instrument, indicator, or commodity and through which specific financial risks can be traded in the financial markets in their own right. Derivative instruments include futures, interest and cross-currency swaps, forward rate agreements, forward foreign exchange contracts, credit derivatives and various types of options.

D. Other Investments: (Block 3C and 5C)

This is a residual category that **includes** all financial outstanding **not considered as direct investment or portfolio investment** such as:

(i) Trade Credits (Block 3C & 5C, Item 4.0)

Trade credits are assets and liabilities that arise from the **direct extension of credit** from a **supplier to a buyer** for transactions in **goods and services** and **advance payments** by buyers for transactions in goods and services and for work in progress. **Trade credit assets** are **advance payments** made by **importer (you)** for (your) imports or **credit extended by exporter (you)** directly to (your) importer. **Trade credit liabilities** are **advance payment received** by the exporter (you) for (your) exports or **credit received by importer (you)** directly from (your) exporter. It may be noted here that **funding provided by an enterprise other than the supplier** for the purpose of purchasing goods or services is treated **as a loan** and not as trade credit.

(ii) Loans (Block 3C & 5C, Item 5.0)

Loans are direct lending of funds by a creditor to a debtor through arrangements. These include, loans to finance trade (i.e. Buyers' credit in which a bank or a financial institution or an export credit agency in the exporting country extends a loan directly to a foreign buyer or to a bank in the importing country to pay for the purchase of goods and services), mortgages, and other loans and advances. Financial leases and repurchase agreements are also considered loans.

Note that **loan received from the non-resident direct investor** should be reported under **Other Capital of Block 2A or 2B** while **loan extended** to your **subsidiaries/ associates abroad** should be reported under **Other Capital of block 4A or 4B**. These outstanding loans should be reported under the loan item of Block 3C or 5C.

www.taxguru.in

(iii) Other Liabilities and Assets (Block 3C & 5C, Item 6.0)
These are the residual items that include all external financial liabilities and assets not recorded elsewhere in the liabilities/assets. These are miscellaneous accounts receivable and payable such as accounts relating to interest payments in arrears, loan payments in arrears, wages and salaries outstanding, prepayments of insurance premiums, taxes outstanding & the like.

(iv) Long-term and Short-term Investment (Block 3C & 5C)
Long-term investment is defined as investment with an original contractual maturity of more than one year. Short-term investment includes currency, investment payable on demand or with an original contractual maturity of one year or less.

E. Disinvestments in India and Abroad (Item 3.0 in Block 2A, 2B, 3A, 4A, 4B & 5A)
Any disinvestments made by non-resident direct investor of the reporting Indian company during the year should be reported in Block 2A and Block 2B and portfolio disinvestments in Block 3A. Likewise, any disinvestment made by the reporting Indian company in its DIE abroad during the year should be reported in Block 4A and 4B and portfolio disinvestments by reporting company should be reported in Block 5A.

F. Contingent Liabilities (Block 7)
Contingent liabilities are obligations that **arise from a particular discrete event(s), which may or may not occur**. Contingent liabilities are (i) **explicit - arise from a legal or contractual arrangement** (Loan & other payment guarantees, credit guarantees, Contingent credit availability guarantees, exchange rate guarantees, etc) and (ii) **implicit - do not arise from a legal or contractual source, but recognized after a condition or event is realized.**

If the Indian company has extended a guarantee to a loan taken by non-resident entity (may be its subsidiary abroad), such guarantees are part of contingent foreign liabilities. In this case, under column1 of block 7, "Loan Guarantee" needs to be mentioned.

Country should relate to the country of location of the non-resident creditor involved in the transaction. To illustrate, as mentioned above, if the contingent foreign liability is in connection with guarantees on loans, the country of location of the non-resident creditor to whom such guarantees are given, needs to be reported in column 2.

Seal/

www.taxguru.in

Annex - 8

Form FC-TRS		
Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures by way of sale from resident to non resident / non-resident to resident		
	(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)	
	The following documents are enclosed *For sale of shares / compulsorily and mandatorily convertible preference shares / debentures by a person resident in India* i. Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document. ii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India. iii. Certificate indicating fair value of shares from a Chartered Accountant. iv. Copy of Broker's note if sale is made on Stock Exchange. v. Declaration from the buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with. *vi.* Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached. *Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures by a person resident outside India* vii. If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis. viii. No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Account.	
1	**Name of the company**	

www.taxguru.in

	Address (including e-mail , telephone Number, Fax no)	
	Activity	
	NIC Code No.	
2	**Whether FDI is allowed under Automatic route**	
	Sectoral Cap under FDI Policy	
3	**Nature of transaction** *(Strike out whichever is not applicable)*	Transfer from resident to non resident / Transfer from non resident to resident
4	**Name of the buyer**	
	Constitution / Nature of the investing Entity Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[π]) 9. Partnership / Proprietorship firm 10. Financial Institution 11. NRIs / PIOs 12. others	
	Date and Place of Incorporation	

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

www.taxguru.in

	Address of the buyer *(including e-mail, telephone number. Fax no.)*				
5	**Name of the seller**				
	Constitution / Nature of the disinvesting entity Specify whether 1. Individual 2. Company 3. FII 4. FVCI 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[Π]) 9. Partnership/ Proprietorship firm 10. Financial Institution 11. NRIs/PIOs 12. others				
	Date and Place of Incorporation				
	Address of the seller *(including e-mail, telephone Number Fax no)*				
6	**Particulars of earlier Reserve Bank / FIPB approvals**				
7	**Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures to be transferred**				
	Date of the transaction	***Number of shares CMCPS / debentures***	***Face value in Rs.***	***Negotiated Price for the transfer**in Rs.***	***Amount of consideration in Rs.***

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

www.taxguru.in

8	**Foreign Investments in the company**		*No. of shares*		*Percentage*
		Before the transfer			
		After the transfer			
9	**Where the shares / CMCPS / debentures are listed on Stock Exchange**				
	Name of the Stock exchange				
	Price Quoted on the Stock exchange				
	Where the shares / CMCPS / debentures are Unlisted				
	*Price as per Valuation guidelines**				
	Price as per Chartered Accountants ** / ** Valuation report (CA Certificate to be attached)*				

Declaration by the transferor / transferee

I / We hereby declare that :

i. The particulars given above are true and correct to the best of my/our knowledge and belief.

ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.

iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures of a company engaged in financial services sector or a sector where general permission is not available.

iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.

www.taxguru.in

Signature of the Declarant or his duly authorised agent

Date:

Note:
In respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures from resident to non resident the declaration has to be signed by the non resident buyer, and in respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures from non-resident to resident the declaration has to be signed by the non-resident seller.

Certificate by the AD Branch

It is certified that the application is complete in all respects.

The receipt /payment for the transaction are in accordance with FEMA Regulations / Reserve Bank guidelines.

Signature

Name and Designation of the Officer

Date: Name of the AD Branch

AD Branch Code

www.taxguru.in

Annex-9

Form DR

[Refer to paragraph 4(2) of Schedule 1]

Return to be filed by an Indian Company who has arranged issue of GDR/ADR

Instructions : The Form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai.

1.	Name of the Company		
2.	Address of Registered Office		
3.	Address for Correspondence		
4.	Existing Business (please give the NIC Code of the activity in which the company is predominantly engaged)		
5.	Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof		
6.	Name and address of the Depository abroad		
7.	Name and address of the Lead Manager/ Investment/Merchant Banker		
8.	Name and address of the Sub-Managers to the issue		
9.	Name and address of the Indian Custodians		
10.	Details of FIPB approval (please quote the relevant NIC Code if the GDRs/ADRs are being issued under the Automatic Route)		
11.	Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details		
12.	Details of the Equity Capital	Before Issue	After Issue
	(a) Authorised Capital		
	(b) Issued and Paid-up Capital		
	(i) Held by persons Resident in India		
	(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of		

www.taxguru.in

foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)

(iii) Held by NRIs/PIOs/OCBs

(iv) Held by FIIs

Total Equity held by non-residents

(c) Percentage of equity held by non-residents to total paid-up capital

13. Whether issue was on private placement basis. If yes, please give details of the investors and GDRs/ADRs issued to each of them

14. Number of GDRs/ADRs issued

15. Ratio of GDRs/ADRs to underlying shares

16. Issue Related Expenses

(a) Fee paid/payable to Merchant Bankers/Lead Manager

(i) Amount (in US$)

(ii) Amount as percentage to the total issue

(b) Other expenses

17. Whether funds are kept abroad. If yes, name and address of the bank

18. Details of the listing arrangement

Name of Stock Exchange

Date of commencement of trading

19. The date on which GDRs/ADRs issue was launched

20. Amount raised (in US $)

21. Amount repatriated (in US $)

Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with.

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory of the Company

www.taxguru.in

Annex - 10

Form DR - Quarterly

[Refer to paragraph 4(3) of Schedule 1]

Quarterly Return

(to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)

1. Name of the Company
2. Address
3. GDR/ADR issue launched on
4. Total No. of GDRs/ADRs issued
5. Total amount raised
6. Total interest earned till end of quarter
7. Issue expenses and commission etc.
8. Amount repatriated
9. Balance kept abroad - Details
   - (i) Banks Deposits
   - (ii) Treasury Bills
   - (iii) Others (please specify)
10. No. of GDRs/ADRs still outstanding
11. Company's share price at the end of the quarter
12. GDRs/ADRs price quoted on overseas stock exchange as at the end of the quarter

Certified that the funds raised through GDRs/ADRs have not been invested in stock market or real estate.

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory of the Company

www.taxguru.in