



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA



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January 4, 2018

(Updated up to March 17, 2022)

(Updated up to March 08, 2019)

(Updated up to December 19, 2018)

(Updated as on April 06, 2018)

(Updated as on January 12, 2018)

To,

All Authorised Dealer Category – I banks
and Authorised banks

Madam / Sir,

Master Direction – Foreign Investment in India

Foreign Investment in India is regulated in terms of sub-section 2A of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with [Foreign Exchange Management \(Non-Debt Instruments\) Rules, 2019](#) (NDI Rules) issued vide Gazette Notification No. S.O. 3732(E) dated October 17, 2019. These rules are amended from time to time to incorporate the changes in the regulatory framework and published through gazette notifications.

2. Rule 2(A) of NDI Rules empowers the Reserve Bank of India (RBI) to administer it, and while administering these rules, the RBI may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.
3. RBI, therefore, issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. This Master Direction lays down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/ constituents with a view to implementing the rules framed.
4. Instructions issued on Foreign Investment in India and its related aspects under the FEMA have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in [Annex 11](#).

5. The instructions relating to mode of payment and reporting requirements for investment in India by a person resident outside India are contained in [Foreign Exchange Management \(Mode of Payment and Reporting of Non-Debt Instruments\) Regulations, 2019 \(FEMA 395\)](#). The person/ entity responsible for filing such reports shall be liable for payment of late submission fee for any delays in reporting.

6. It may be noted that, whenever necessary, RBI shall issue directions to Authorised Persons through A.P. (DIR Series) Circulars with regard to interpretations of the NDI Rules or the manner in which relative transactions are to be conducted by the Authorised Persons with their customers/ constituents and/ or amend the Master Direction issued herewith. This Master Direction has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Rule 2(A) (2) of the NDI Rules and are without prejudice to permissions/ approvals, if any, required under any other law.

Yours faithfully

(Ajay Kumar Misra)
Chief General Manager-in-Charge

Master Direction – Foreign Investment in India

1. Introduction

1.1 The FEMA, 1999 empowers the Central Government to prescribe, in consultation with the RBI, rules pertaining to capital account transactions, not involving debt instruments. The Central Government has, accordingly, notified the NDI Rules on October 17, 2019, in supersession of the [Foreign Exchange Management \(Transfer or Issue of Security by a Person Resident outside India\) Regulations, 2017](#), and the [Foreign Exchange Management \(Acquisition and Transfer of Immovable Property in India\) Regulations, 2018](#).

1.2 Further, in exercise of the powers conferred by Section 47 of FEMA and consequent to the NDI Rules, the RBI issued [Foreign Exchange Management \(Mode of Payment and Reporting of Non-Debt Instruments\) Regulations, 2019 \(FEMA 395\)](#), relating to mode of payment and reporting requirements for investment in India by a person resident outside India.

1.3 The NDI Rules are administered by the RBI and for the effective implementation of the rules, these directions under Sections 10(4) and 11(1) of FEMA and Rule 2(A)(2) of the NDI Rules have been issued. These directions may be referred to for general guidance and should be read in conjunction with the relevant notifications/directions issued under FEMA/ NDI Rules/FEMA 395.

1.4 An investment made by a person resident outside India in accordance with FEMA or the rules or the regulations framed thereunder and held on the date of commencement of NDI Rules i.e. October 17, 2019, shall be deemed to have been made in accordance with NDI Rules and shall accordingly be governed under it.

1.5 In terms of Section 6(5) of FEMA, a person resident outside India may hold, own, transfer or invest in a security in India if such security was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India. Such investment will be held by such person on a non-repatriable basis.

2. Key terms

Some key terms used in this Master Direction are given below:

2.1 'Act' is the Foreign Exchange Management Act, 1999 (42 of 1999).

2.2 'Equity Instruments' are equity shares, convertible debentures, preference shares and share warrants issued by an Indian company. The details of what shall construe equity instruments are at para 4 of this Master Direction.

2.3 'Convertible Note' is an instrument issued by a start-up company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such start-up company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

2.4 'E-commerce' is buying and selling of goods and services including digital products over digital & electronic network.

2.4.1 'E-commerce entity' are the following entities conducting the e-commerce business

- a) a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or
- b) a foreign company covered under section 2 (42) of the Companies Act, 2013 or
- c) an office, branch or agency in India owned or controlled by a person resident outside India and

2.4.2 'Inventory based model of e-commerce' means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

2.4.3 'Market place model of e-commerce' means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

2.4.4 Foreign investment is not permitted in Inventory based model of e-commerce.

2.5 'FDI linked performance conditions' is the sector specific conditions stipulated in Schedule I of the NDI Rules for companies receiving foreign investment.

2.6 'Foreign Direct Investment' (FDI) is the investment through equity instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

2.6.1 If an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below 10 percent of the post issue paid-up equity capital on a fully diluted basis, the investment will continue to be treated as FDI.

2.6.2 Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

2.7 'Foreign Portfolio Investment' is any investment made by a person resident outside India in equity instruments where such investment is (a) less than 10 percent of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company or (b) less than 10 percent of the paid-up value of each series of equity instruments of a listed Indian company.

2.8 'Foreign Portfolio Investor (FPI)' is a person registered in accordance with the provisions of Securities Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

2.8.1 Any Foreign Institutional Investor (FII) or a sub account registered under the Securities Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 and holding a valid certificate of registration from SEBI shall be deemed to be a FPI till the expiry of the block of three years from the enactment of the SEBI (Foreign Portfolio Investors) Regulations, 2014.

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

2.9.1 Issue/ transfer of 'participating interest/ right' in oil fields by Indian companies to a person resident outside India would be treated as foreign investment.

2.9.2 If a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

2.9.3 A person resident outside India may hold foreign investment either as Foreign Direct Investment or as Foreign Portfolio Investment in any particular Indian company.

2.10 'Group company' is two or more enterprises which, directly or indirectly, are in a position to (a) exercise 26 percent, or more of voting rights in other enterprise; or (b) appoint more than 50 percent of members of board of directors in the other enterprise.

2.11 'Indian entity' is an Indian company or an LLP.

2.12 'Investment' is to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India.

2.12.1 Investment will include acquisition, holding or transfer of depository receipts issued outside India, the underlying of which is a security issued by a person resident in India.

2.12.2 For the purpose of an LLP, investment shall mean capital contribution or acquisition/ transfer of profit shares.

2.13 'Investment on repatriation basis' is an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated and the expression 'Investment on non-repatriation basis', will be construed accordingly.

2.14 'Investment Vehicle' is an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and will be Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvITs) governed by the SEBI (InvITs) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.

2.14.1 A Venture Capital Fund (VCF) established in the form of a trust or a company or a body corporate and registered under the SEBI (Venture Capital Fund) Regulations, 1996 will not be considered as an Investment Vehicle for the purpose of the NDI Rules and this Master Direction.

2.15 'Limited Liability Partnership (LLP)' is a partnership formed and registered under the Limited Liability Partnership Act, 2008.

2.16 'Listed Indian Company' is an Indian company which has any of its equity instruments listed on a recognized stock exchange in India and the expression 'Unlisted Indian Company' shall be construed accordingly

2.17 'Non-Debt Instruments' as determined by Central Government by Gazette Notification S.O. 3722 (E) dated October 16, 2019, means the following instruments; namely: -

- a) all investments in equity instruments in incorporated entities: public, private, listed and unlisted;
- b) capital participation in LLP;
- c) all instruments of investment recognised in the FDI policy notified from time to time;
- d) investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvITs);
- e) investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
- f) junior-most layer (i.e. equity tranche) of securitisation structure;
- g) acquisition, sale or dealing directly in immovable property;
- h) contribution to trusts; and
- i) depository receipts issued against equity instruments.

2.18 'Non-Resident Indian (NRI)' is an individual resident outside India who is citizen of India.

2.19 'Overseas Citizen of India (OCI)' is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

2.20 'Resident Indian citizen' is an individual who is a person resident in India and is citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

2.21 'Real estate business' is dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

Explanation: —

- i) Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) regulations 2014 shall also be excluded from the definition of "real estate business".*
- ii) Earning of rent income on lease of the property, not amounting to transfer, shall not amount to real estate business.*
- iii) Transfer in relation to real estate includes,*
 - a) the sale, exchange or relinquishment of the asset; or*
 - b) the extinguishment of any rights therein; or*
 - c) the compulsory acquisition thereof under any law; or*
 - d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or*
 - e) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.*

Real estate broking services is excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.

2.22 'Sectoral cap' is the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the investee Indian entity.

2.22.1 FCCBs and DRs having underlying of instruments being in the nature of debt shall not be included in the sectoral cap.

2.22.2 Any equity held by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned under the sectoral cap.

2.23 'Unit' is the beneficial interest of an investor in an investment vehicle.

The words and expressions used but not defined in this Master Direction shall have the same meanings respectively as assigned to them in the Act, Rules and Regulations made thereunder.

3. Prohibited sectors/ persons

3.1 Investment by a person resident outside India is prohibited in the following sectors:

- (1) Lottery Business including Government/ private lottery, online lotteries.
- (2) Gambling and betting including casinos.
- (3) Chit funds
- (4) Nidhi company
- (5) Trading in Transferable Development Rights (TDRs).
- (6) Real Estate Business or Construction of farm houses.

Explanation: For the purpose of this rule, 'real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

- (7) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- (8) Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- (9) 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.

3.2 Investment under Schedule I of NDI Rules by an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government approval route. [Ref: Press Note No. 3 (2020 Series)]

3.3 A person who is a citizen of Pakistan or an entity incorporated in Pakistan can, only with the prior Government approval, invest in sectors/ activities other than defence, space, atomic energy and sectors/ activities prohibited for foreign investment.

3.4 In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of (3.2) and (3.3) above, such subsequent change in beneficial ownership shall also require government approval.

4. Equity instruments

4.1 An Indian company is permitted to receive foreign investment by issuing equity instruments to the investor. The equity instruments are equity shares, convertible debentures, preference shares and share warrants issued by the Indian company.

4.2 Equity shares: Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include equity shares that have been partly paid.

4.3 Partly paid shares: Partly paid shares issued on or after July 8, 2014 will be considered as equity instruments.

4.3.1 Partly paid shares that have been issued to a person resident outside India should be fully called-up within twelve months of such issue.

4.3.2 Twenty five percent of the total consideration amount (including share premium, if any), has to be received upfront and the balance consideration towards fully-paid equity shares should be received within a period of twelve months from the date of issue of partly-paid shares.

4.3.3 It shall not be necessary for a listed Indian company to receive the balance consideration within 12 months, if it has appointed a monitoring agency in compliance with regulations 41, 82, and 137 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended from time to time

4.3.4 In case of an unlisted Indian company too, the balance consideration amount can be received after 12 months, however, the investee company should appoint a monitoring agency on the same lines as required in case of a listed Indian company under the SEBI (ICDR) Regulations. Such monitoring agency (AD Category -1 bank) should report to the investee company as prescribed by the SEBI regulations, *ibid*, for the listed companies.

4.3.5 In case of non-payment of call money, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable.

4.3.6. These conditions shall also be applicable where the person resident outside India acquires partly paid-up shares via transfer.

4.4 Share warrants: Share warrants issued on or after July 8, 2014 will be considered as equity instruments.

4.4.1 Share Warrants are those issued by an Indian Company in accordance with the Regulations issued by the SEBI in this regard.

4.4.2 Pricing or the conversion formula shall be determined upfront. At least twenty five percent of the consideration has to be received upfront and the balance amount within eighteen months of issuance of share warrants. The price at the time of conversion should not be, in any case, lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant rules/ regulations and pricing guidelines stipulated from time to time

4.4.3 In case of non-payment of balance consideration, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable.

4.4.4 These conditions shall also be applicable where the person resident outside India acquires share warrants via transfer.

4.5 The deferment of payment of consideration amount by the foreign investors or shortfall in receipt of consideration amount as per applicable pricing guidelines will not be treated as subscription to partly paid shares and warrants.

4.6 Debentures: Debentures which are fully, compulsorily and mandatorily convertible are treated as equity instruments.

4.6.1 Amendment of the tenor of compulsorily and mandatorily convertible debentures shall be in compliance with the Companies Act, 2013.

4.6.2 Debentures which are not fully, compulsorily and mandatorily convertible are debt instruments in terms of the notification no. S.O.3722(E) dated October 16, 2019, issued under sub-section (7) of Section 6 of FEMA. Therefore, issuance of the same are not governed under the NDI Rules.

4.6.3 Optionally convertible/ partially convertible debentures issued up to June 7, 2007 or for which funds were received for such issue prior to June 7, 2007 are deemed to have been issued in accordance with the NDI Rules till their original maturity. Any extension of maturity prior to June 7, 2007, by the company in accordance with the provisions of the Companies Act, 2013, will be considered as original maturity for the purpose of these rules.

4.6.4 Non-convertible/ optionally convertible/ partially convertible debentures, funds for which have been received after June 07, 2007, shall be treated as debt and shall conform to External Commercial Borrowing (ECB) guidelines framed under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018, as amended from time to time.

4.7 Preference shares: Preference shares are fully, compulsorily and mandatorily convertible preference shares.

4.7.1 Amendment of the tenor of fully, compulsorily and mandatorily convertible preference shares shall be in compliance with the Companies Act, 2013.

4.7.2 'Preference Shares' which are not fully, compulsorily and mandatorily convertible preference shares are debt instruments in terms of the notification no. S.O.3722(E) dated October 16, 2019, issued under sub-section (7) of Section 6 of FEMA. Therefore, issuance of the same are not governed under the NDI Rules.

4.7.3 Non-convertible/ optionally convertible/ partially convertible preference shares issued up to April 30, 2007 are deemed to have been issued in accordance with NDI Rules till their original maturity. They, however, will continue to be outside the sectoral caps till their original maturity. Any extension of maturity prior to April 30, 2007 will be considered as original maturity.

4.7.4 Non-convertible/ optionally convertible/ partially convertible preference shares funds for which have been received after April 30, 2007 shall be treated as debt and shall conform to guidelines framed under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018, as amended from time to time.

4.8 Equity instruments issued on or after December 30, 2013 can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.

5. Entry routes and Permitted sectors

5.1 Entry Routes

Foreign investment in the equity instruments of an Indian company can be made through two routes,

5.1.1 Automatic Route is the entry route in which investment by a person resident outside India does not require the prior approval from the Central Government.

5.1.2 Government Route is the entry route in which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

5.1.3 'Government approval' means approval from the erstwhile Secretariat for Industrial Assistance (SIA)/ Department of Industrial Policy and Promotion (DIPP), Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be. The entities may make applications for Government approval on the Foreign Investment Facilitation Portal (FIFP) of Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India.

5.1.4 Aggregate Foreign Portfolio Investment up to forty-nine (49) percent of the paid-up capital on a fully diluted basis or the sectoral or statutory cap, whichever is lower, shall not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India. Other investments by a person resident outside India shall be subject to conditions of Government approval and compliance of sectoral conditions as laid down in Schedule I of the NDI Rules.

Note: Investment from specified countries are to be in accordance with Paras 3.2, 3.3 and 3.4 of these directions.

5.2 Sectoral caps

It means the maximum permissible foreign investment in an Indian entity, including both foreign investment on a repatriation basis by person residents outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise

5.2.1 Foreign investment in the sectors/ activities given in Schedule I of the NDI Rules is permitted up to the limit indicated against each sector/ activity, subject to applicable laws/ rules/ regulations, security and other conditionalities.

5.2.2 Sectoral cap for the sectors/ activities is the limit indicated against each sector. The total foreign investment shall not exceed the sectoral/ statutory cap

5.2.3 Foreign investment is permitted up to 100% on the automatic route, subject to applicable laws/rules/regulations, security and other conditionalities, in sectors/ activities not listed in Schedule I of the NDI Rules and not prohibited under Para (2) of Schedule I of the NDI Rules. This condition is not applicable for activities in financial services.

5.2.4 Foreign investment in financial services other than those indicated under serial number "F" of table under Para (3)(b) of Schedule I of the NDI Rules would require prior Government approval.

5.2.5 Wherever there is a requirement of minimum capitalization, it will include premium received along with the face value of the equity instrument. However, it should be received by the company upon issue of such instruments to a person resident outside India. Amount paid by the transferee during post-issue transfer beyond the issue price of the equity instrument cannot be taken into account while calculating minimum capitalization requirement.

5.2.6 Foreign investment in investing companies:

5.2.6.1 Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the RBI and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, will require prior Government approval.

5.2.6.2 The core investment companies should additionally comply with the regulatory framework prescribed for such entities as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder.

5.2.6.3 Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the RBI, will be under 100% automatic route.

5.2.7 For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment, may receive investment in its equity instruments from persons resident outside India under automatic route. However, Government approval will be required for such companies for undertaking activities which are under Government route. 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.

5.2.8 The onus of compliance with the sectoral/ statutory caps on foreign investment and attendant conditions if any, will be on the company receiving foreign investment.

5.2.9 Wherever the person resident outside India who has made foreign investment specifies a particular auditor/ audit firm having international network for the audit of the Indian investee company, then audit of such investee company should be carried out as joint audit wherein one of the auditors is not part of the same network.

6. Permitted Investments by persons resident outside India

Unless otherwise specifically stated, any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for making such investment. A person resident outside India may make investment as stated hereinafter.

6.1 Subscribe/ purchase/ sale of equity instruments of an Indian company is permitted as per the directions laid down in [Annex 1](#).

6.2 Purchase/ sale of equity instruments of a listed Indian company on a recognised stock exchange in India by Foreign Portfolio Investors is permitted as per the directions laid down in [Annex 2](#).

6.3 Purchase/ sale of equity instruments of a listed Indian company on a recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis is permitted as per the directions laid down in [Annex 3](#).

6.4 Purchase/ sale of equity instruments of an Indian company or Units or contribution to capital of a LLP or a firm or a proprietary concern by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on a Non-Repatriation basis is permitted as per the directions laid down in [Annex 4](#).

6.5 Investment in a Limited Liability Partnership (LLP) is permitted as per the directions laid down in [Annex 5](#).

6.6 Investment by a Foreign Venture Capital Investor (FVCI) is permitted as per the directions laid down in [Annex 6](#).

6.7 Investment in an Investment Vehicle is permitted as per the directions laid down in [Annex 7](#).

6.8 Issue/ transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s) is permitted as per the directions laid down in [Annex 8](#).

6.9 Purchase/ sale of Indian Depository Receipts (IDRs) issued by Companies Resident outside India is permitted as per directions laid down in [Annex 9](#).

6.10 Investment by other non-resident Investors as per the directions laid down in [Annex 10](#)

6.11 Acquisition through rights issue or bonus issue

6.11.1 A person resident outside India having investment in an Indian company is permitted to invest in the equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue subject to the following conditions:

- (1) The offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013;
- (2) The issue does not result in a breach of the sectoral cap applicable to the company;
- (3) The shareholding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of NDI Rules;
- (4) The equity instruments (other than share warrants) acquired by the person resident outside India as bonus or rights issue will be subject to the same conditions including restrictions in regard to repatriability as applicable to the original holding against which rights or bonus issue has been made. Further, the nature of investment (FDI or FPI) shall remain the same as that of original investment against which rights were issued;
- (5) In case of a listed Indian company, the rights issued to persons resident outside India shall be at a price determined by the company;
- (6) In case of an unlisted Indian company, the rights issued to persons resident outside India should not be at a price less than the price offered to persons resident in India;
- (7) Such investment made through rights issue or bonus issue is subject to the conditions as are applicable at the time of such issue;

- (8) The amount of consideration may be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#);
- (9) If the original investment has been made on a non-repatriation basis, the amount of consideration may also be paid by debit to the NRO account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).
- (10) Indian company may issue equity instruments under Section 62(1) (a) (iii) of Companies Act, to a person resident outside India (other than an OCB). Such issue shall be subject to the pricing guidelines prescribed under Rule 21 of NDI Rules.

6.11.2 An individual who is a person resident outside India exercising a right which was issued when he/ she was a person resident in India can hold the equity instruments so acquired on exercising the right on a non-repatriation basis.

6.11.3 With effect from November 12, 2002, the Indian investee company could, on an application made to it, allot to existing shareholders who are persons resident outside India additional equity instruments (other than share warrants) as a rights issue over and above their rights entitlement subject to individual or sectoral caps, as the case may be.

6.11.4 Renunciation of rights

- (1) A person resident in India and a person resident outside India may subscribe to additional shares over and above the shares offered on rights basis by the company and also renounce the shares offered either in full or part thereof in favour of a person named by them.
- (2) The facility at para 6.11.3 and para 6.11.4(1) would not be available to investors who have been allotted such shares as Overseas Corporate Bodies (OCBs).
- (3) A person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under Rule 21 of the NDI Rules.
- (4) The equity instruments to be acquired on renunciation of rights shall be subject to the same conditions including restrictions in regard to repatriability as applicable to the original holding against which rights issue has been made.

6.12 Issue of Employees' Stock Options (ESOP) and Sweat Equity Shares

6.12.1 An Indian company is permitted to issue "employees' stock option" and/ or "sweat equity shares" to its employees/ directors or employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to the following conditions:

- (1) The ESOP is drawn either in terms of regulations issued under the SEBI Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013;
- (2) The “employee’s stock option”/ “sweat equity shares” are in compliance with the sectoral cap applicable to the said company;
- (3) Issue of “employee’s stock option”/ “sweat equity shares” in a company where investment by a person resident outside India is under the approval route requires prior Government approval;
- (4) Issue of “employee’s stock option”/ “sweat equity shares” to a citizen of Bangladesh/ Pakistan requires prior Government approval.
- (5) Issue of “sweat equity shares” to a person resident outside India was permitted with effect from June 11, 2015.

6.12.2 An individual who is a person resident outside India exercising an option which was issued when he/ she was a person resident in India shall hold the equity instruments so acquired on exercising the option on a non-repatriation basis.

6.13 Issue of Convertible Notes by an Indian startup company

6.13.1 A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), is permitted to invest in convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

6.13.2 A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, can issue convertible notes to a person resident outside India only with such approval.

6.13.3 Issue of equity shares against such convertible notes should be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.

6.13.4 The payment consideration can be received by inward remittance through banking channels or by debit to the NRE/ FCNR (B)/ Escrow account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#). The escrow account maintained for this purpose should be closed immediately after the requirements are completed or within a period of six months, whichever is earlier. Such an escrow account shall not be permitted to continue beyond a period of six months.

6.13.5 An NRI or an OCI may acquire convertible notes on a non-repatriation basis in accordance with the instructions at para 6.4 of the Master Direction.

6.13.6 A person resident outside India can acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines laid down in this Master Direction.

6.13.7 Convertible notes as an investment option was permitted for startup companies with effect from January 10, 2017.

6.13.8 The convertible note may either be converted to equity shares or repaid within 5 years from the date of the issue at the option of the holder. Repayment or sale proceeds may be remitted outside India or credited to NRE/ FCNR (B) account maintained by the person concerned in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#)

6.14 Merger or demerger or amalgamation of Indian companies

6.14.1 In case a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company has been approved by the National Company Law Tribunal (NCLT)/ Competent Authority, the transferee company or the new company, as the case may be, can issue equity instruments to the existing holders of the transferor company who are resident outside India, subject to the following conditions:

- (1) The transfer or issue should comply with entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of foreign investment as well as reporting in form FC-GPR or FC-TRS as the case may be.
- (2) In case the foreign investment is likely to breach the Sectoral caps or the attendant conditionalities, the transferor company or the transferee or the new company should obtain necessary Government approval.
- (3) The transferor company or the transferee company or the new company should not be in a sector prohibited for foreign investment.
- (4) In a scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, where any of the companies involved is listed on a recognised stock exchange in India, the scheme of arrangement shall be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015, as amended from time to time.

7. Transfer of equity instruments of an Indian company by or to a person resident outside India

A person resident outside India who has invested in equity instruments of an Indian company or units in accordance with NDI Rules can transfer the equity instruments or units so held subject to the terms and conditions specified in this para.

7.1 Transfer from a person resident outside India by way of sale or gift to any person resident outside India

7.1.1 A person resident outside India, not being a non-resident Indian or an overseas citizen of India or an overseas corporate body, may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India.

7.1.2 It shall also include transfer of equity instruments of an Indian company pursuant to merger, de-merger and amalgamation of entities/ companies incorporated or registered outside India.

7.1.3 Prior Government approval is required to be obtained for any transfer in case the company is engaged in a sector which requires Government approval.

7.1.4 Where the person resident outside India is an FPI and the acquisition of equity instruments made under para 6.2 of this Master Direction has resulted in a breach of the applicable aggregate FPI limits or sectoral limits, the FPI is required to sell such equity instruments within five trading days after settlement to a person resident in India eligible to hold such instruments. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale, provided the sale is within the prescribed five trading days after settlement, will not be reckoned as a contravention under NDI Rules. The guidelines issued by SEBI in this regard shall be applicable.

7.2 Transfer by an overseas corporate body (OCB)

An OCB may transfer equity instruments in accordance with the instructions given in the FAQs on de-recognition of OCBs issued vide [AP \(DIR Series\) Circular No.14 dated September 16, 2003](#).

7.3 Transfer by an NRI/ OCI by way of gift or sale to any person resident outside India

7.3.1 An NRI or an OCI holding equity instruments of an Indian company or units on repatriation basis can transfer the same by way of sale or gift to any person resident outside India.

7.3.2 Prior Government approval is required for any transfer in case the company is engaged in a sector which requires Government approval.

7.3.3 Where the equity instruments acquired by an NRI or an OCI under the provisions of para 6.3 of this Master Direction has resulted in a breach of the applicable aggregate NRI/ OCI limit or sectoral limits, the NRI or the OCI is required to sell the equity instruments so acquired within five trading days after settlement to a person resident in India eligible to hold such instruments. The breach of the said aggregate or sectoral limit, as the case may be, on account of such acquisition for the period between the acquisition and sale, provided the sale is within the

prescribed five trading days after settlement, shall not be reckoned as a contravention under NDI Rules.

7.4 Transfer by a NRI/ OCI holding equity instruments on a non-repatriable basis or a person resident in India by way of sale to any person resident outside India

7.4.1 A person resident in India holding equity instruments of an Indian company or units, or an NRI or an OCI or a company/ trust/ partnership firm incorporated outside India and owned and controlled by NRIs or OCIs holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions as applicable for foreign investment and documentation and reporting requirements for such transfers.

7.4.2 The entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions, however, will not apply in case the transferee is an NRI or an OCI or a company/ trust/ partnership firm incorporated outside India and owned and controlled by NRIs or OCIs acquiring such investment on a non-repatriation basis.

7.5 Transfer by an NRI/ OCI holding equity instruments on a non-repatriable basis by way of gift to another NRI/ OCI who will hold such equity instruments on a non-repatriable basis

7.5.1 An NRI or an OCI or a company/ trust/ partnership firm incorporated outside India and owned and controlled by NRIs or OCIs holding equity instruments of an Indian company or units on a non-repatriation basis, is permitted to transfer the same by way of gift to an NRI or an OCI or a company/ trust/ partnership firm incorporated outside India and owned and controlled by NRIs or OCIs and the transferee shall hold them on a non-repatriable basis.

7.6 Transfer by person resident outside India to person resident in India or sale on recognised stock exchange in India

7.6.1 A person resident outside India, holding equity instruments of an Indian company or units in accordance with NDI Rules is permitted to transfer the same to a person resident in India by way of sale/ gift or may sell the same on a recognised stock exchange in India in the manner prescribed by SEBI.

7.6.2 The transfer by way of sale is required to be in compliance with and is subject to the adherence to pricing guidelines, documentation and reporting requirements prescribed for such transfers.

7.6.3 Where the equity instruments are held by the person resident outside India on a non-repatriable basis, conditions at 7.6.2 above will not apply.

7.7 Transfer by way of gift by an NRI/ OCI holding securities on a non-repatriable basis or a resident to a person resident outside India

7.7.1 An NRI or an OCI holding securities of an Indian company on a non-repatriation basis or a person resident in India may transfer the securities so held by them to a person resident outside India by way of gift with the prior approval of the RBI and subject to the following conditions:

- (a) The donee is eligible to hold the securities under NDI Rules;
- (b) The gift does not exceed 5 percent of the paid up capital of the Indian company/ each series of debentures/ each mutual fund scheme; this limit is a cumulative limit for a donor to one particular donee.
- (c) The applicable sectoral cap in the Indian company is not breached;
- (d) The donor and the donee are relatives as defined in section 2(77) of the Companies Act, 2013;
- (e) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50,000;
- (f) The application shall be made through an Authorised Dealer bank to the Regional Office concerned of the RBI under whose jurisdiction the Registered office of the company operates.

7.8 Transfer by a person resident outside India of equity instruments containing an optionality clause

7.8.1 A person resident outside India holding equity instruments of an Indian company containing an optionality clause in accordance with NDI Rules and exercising the option/ right, can exit without any assured return, subject to the pricing guidelines prescribed under NDI Rules and a minimum lock-in period of one year or minimum lock-in period under NDI Rules, whichever is higher.

7.9 Deferred payment consideration

7.9.1 In case of transfer of equity instruments between a person resident in India and a person resident outside India, an amount not exceeding twenty five per cent of the total consideration,

- (a) can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement; or
- (b) can be settled through an escrow arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement; or
- (c) can be indemnified by the seller for a period not exceeding eighteen months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller.

7.9.2 The total consideration finally paid for the shares must be compliant with the applicable pricing guidelines.

7.10 Opening of Escrow account

7.10.1 In case of transfer of equity instruments between a person resident in India and a person resident outside India, the person resident outside India is permitted to open an Escrow account in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

7.10.2 Such Escrow account can be funded by way of inward remittance through banking channels and/ or by way of guarantee issued by an authorized dealer bank, subject to terms and conditions as specified in the [Foreign Exchange Management \(Guarantees\) Regulations, 2000](#).

7.10.3 Where the transaction is governed by SEBI guidelines/ regulations, operation of the Escrow accounts for securities shall be in accordance with the relevant SEBI regulations, if any.

7.11 Transfer by way of pledge

7.11.1 Any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing (ECB) in compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge the equity instruments of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company 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 rules laid down in NDI Rules;
- (c) the Statutory Auditor has certified that the borrowing company will utilise/ has utilised the proceeds of the ECB for the permitted end-use/s only;
- (d) no person shall pledge any such equity instruments unless a no-objection has been obtained from an Authorised Dealer bank that the above conditions have been complied with.

7.11.2 Any person resident outside India holding equity instruments in an Indian company or units may pledge the equity instruments or units, as the case may be:

- (a) In favour of a bank in India to secure the credit facilities being extended to such Indian company for bona-fide purposes subject to the following conditions:
 - (i) in case of invocation of pledge, transfer should be in accordance with instructions 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, if any; and
 - (iv) pledge in favour of the lender (bank) would be subject to compliance with the Section 19 of the Banking Regulation Act, 1949.
 - (v) the conditions at (i) to (iv) above will apply suitably for units.
- (b) In favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company, subject to the following conditions:
- (i) loan is availed 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 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;
 - (vi) the conditions at (i) to (v) above will apply suitably for units.
- (c) In favour of a Non-Banking Financial Company registered with the RBI to secure the credit facilities being extended to such Indian company for bona fide purposes, subject to the following conditions:
- (i) in case of invocation of pledge, transfer of equity instruments should be in accordance with the credit concentration norm as stated in the [Master Direction – Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company \(Reserve Bank\) Directions, 2016](#) (Para 22) and [Master Direction – Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company \(Reserve Bank\) Directions, 2016](#) (Para 22)
 - (ii) The AD may obtain a board resolution 'ex ante', passed by the Board of Directors of the investee company, that the loan proceeds received consequent to pledge of equity instruments will be utilised by the investee company for the declared purpose;
 - (iii) the AD may also obtain a certificate 'ex post', from the statutory auditor of investee company, that the loan proceeds received consequent to pledge of shares, have been utilised by the investee company for the declared purpose;
 - (iv) the Indian company has to follow the relevant SEBI disclosure norms, as applicable;

- (v) under no circumstances, the credit concentration norms should be breached by the NBFC. If there is a breach on invocation of pledge, the equity instruments should be sold and the breach shall be rectified within a period of 30 days from the date of invocation of pledge.

7.11.2.1 The Authorised Dealer bank should satisfy itself of the compliance of the stipulated conditions.

- a) Equity instruments of an Indian company or units transferred by way of pledge should be unencumbered.
- b) The company shall obtain no-objection certificate from the existing lenders, if any.
- c) In case of invocation of pledge, transfer of equity instruments of an Indian company or units pledged shall be in accordance with entry routes, sectoral caps/ investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge.

7.11.3 Any other transfer by way of pledge would require the prior approval of the RBI. Cases may be forwarded to the RBI with the following documents:

- (a) A copy of the Board Resolution passed by the non-resident company/ies approving the pledge of security acquired in terms of NDI Rules (number/ percentage of securities to be pledged) of Investee Company held by them for securing the loan facility in favour of the lender/s.
- (b) A copy of the Board Resolution passed by the investee company approving pledge of securities acquired in terms of NDI Rules in favour of the lender for the loan facility availed by the investee company.
- (c) A copy of the loan agreement/ pledge agreement containing security clause duly certified by the company secretary, requiring the pledge of shares of Investee Company.
- (d) The details of the facility availed/ proposed to be availed.
- (e) The details of reporting of the acquisition of the security as prescribed in terms of NDI Rules, if any.

7.12. Transfer from a resident to a person resident outside India where the investee company is in the financial sector

In case of transfer of equity instruments of a company in the financial sector from a resident to a person resident outside India, 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with by the AD bank.

7.13 Mode of payment

7.13.1 The amount of consideration for transfer of equity instruments between a person resident in India and a person resident outside India should be received from abroad or remitted from India, as the case may be, through banking channels in India or paid out from or received in, as the case may be, NRE/ FCNR(B)/ Escrow accounts maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

7.13.2 In case an investment is held on a non-repatriation basis, in addition to 7.13.1 above, the amount of consideration for transfer may be paid out from or received in, as the case may be, NRO account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

8. Pricing guidelines

8.1 Equity instruments issued by a company to a person resident outside India

8.1.1 The price of equity instruments of an Indian company issued by it to a person resident outside India should not be less than:

- (a) the price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009; or
- (b) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.

8.1.2 In case of convertible equity instruments, the price/ conversion formula of the instrument is required to be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA rules.

8.2 Equity instruments transferred by a person resident in India to a person resident outside India

The price of equity instruments of an Indian company transferred by a person resident in India to a person resident outside India should not be less than:

- (a) the price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company; or
- (b) the price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009. The price should be determined for such duration as specified in the SEBI Guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares. In case of a company

which has completed a delisting process, the price as determined for such duration as specified in the SEBI Guidelines will apply for those shares which have not been tendered to the company during the delisting process; or

- (c) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.

8.3 Equity instruments transferred by a person resident outside India to a person resident in India

8.3.1 The price of equity instruments of an Indian company transferred by a person resident outside India to a person resident in India should not exceed:

- (a) the price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company;
- (b) the price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009. The price is determined for such duration as specified in the SEBI Guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares;
- (c) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.

8.3.2 The guiding principle would be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment/ agreement and shall exit at the price prevailing at the time of exit.

8.4 Swap of equity instruments

In case of swap of equity instruments, irrespective of the amount, valuation will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.

8.5 Subscription to Memorandum of Association

Where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments shall be made at face value subject to entry route and sectoral caps.

8.6 Partly paid shares

The pricing of the partly paid equity shares shall be determined upfront.

8.7 Share warrants

8.7.1 In case of share warrants, their pricing and the price/ conversion formula shall be determined upfront.

8.7.2 The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants.

8.8 Investment in an LLP

Investment in an LLP either by way of capital contribution or by way of acquisition/ transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted/ adopted as per market practice (hereinafter referred to as "fair price of capital contribution/ profit share of an LLP") and a valuation certificate to that effect should be issued by a Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

8.9 Transfer of capital contribution/ profit share of an LLP

8.9.1 In case of transfer of capital contribution/ profit share of an LLP from a person resident in India to a person resident outside India, the transfer should be for a consideration not less than the fair price of capital contribution/ profit share of an LLP.

8.9.2 In case of transfer of capital contribution/ profit share of an LLP from a person resident outside India to a person resident in India, the transfer should be for a consideration which is not more than the fair price of the capital contribution/ profit share of an LLP.

8.10 Non-applicability of pricing guidelines

8.10.1 The pricing guidelines will not apply for investment in equity instruments by a person resident outside India on non-repatriation basis.

8.10.2 The pricing guidelines will not be applicable for any transfer by way of sale done in accordance with SEBI regulations where the pricing is prescribed by SEBI. A Chartered Accountant's Certificate to the effect that relevant SEBI regulations/ guidelines have been complied with has to be attached to the form FC-TRS filed with the AD bank.

8.10.3 The valuation certificate issued by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant must not be more than ninety days old as on the date of the transfer.

9. Downstream Investment

The underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". Accordingly, downstream investments which are treated as indirect foreign investment are subject to the entry

routes, sectoral caps or the investment limits, as the case may be, pricing guidelines, and the attendant conditionalities for such investment as laid down in the NDI Rules.

9.1 Definitions

9.1.1 'Ownership of an Indian company' is the beneficial holding of more than 50 percent of the equity instruments of such company.

9.1.2 'Ownership of an LLP' is the contribution of more than 50 percent in its capital and having majority profit share.

9.1.3 'Company owned by resident Indian citizens' is an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

9.1.4 An 'LLP owned by resident Indian citizens' is an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens.

9.1.5 'Company owned by persons resident outside India' is an Indian company whose ownership is vested in persons resident outside India.

9.1.6 An 'LLP owned by persons resident outside India' is an LLP whose ownership is vested with persons resident outside India.

9.1.7 'Control' of a company is the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

9.1.8 For the purpose of LLP, 'Control' is the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.

9.1.9 'Company controlled by resident Indian citizens' is an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

9.1.10 An 'LLP controlled by resident Indian citizens' is an LLP, the control of which is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens.

9.1.11 'Company controlled by persons resident outside India' is an Indian company the control of which is vested with persons resident outside India.

9.1.12 An 'LLP controlled by persons resident outside India' is an LLP the control of which is vested with persons resident outside India.

9.1.13 'Downstream Investment' is investment made by an Indian entity which has received foreign investment or an Investment Vehicle in the equity instruments or the capital, as the case may be, of another Indian entity.

9.1.14 'Holding Company' will have the same meaning as defined in Companies Act, 2013.

9.1.15 'Indirect Foreign Investment' is downstream investment received by an Indian entity from:

- (a) another Indian entity (IE) which has received foreign investment and which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India; or
- (b) an investment vehicle whose sponsor or manager or investment manager is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India. If sponsor or manager or investment manager is organised in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

[Explanation 1: For cases where the original investment made in the investee entity was made as a resident but later the investor entity becomes owned and/or controlled by persons resident outside, the same shall be reckoned as downstream investment from the date on which the investor entity is owned and/or controlled by persons resident outside India. Such downstream investment shall be in compliance with the applicable entry route and sectoral cap]

[Explanation 2: The NRI investments on non-repatriation basis is treated as deemed domestic investment. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment.

9.1.16 'Total Foreign Investment' is the sum of foreign investment and indirect foreign investment which will be reckoned on a fully diluted basis;

9.1.17 'Strategic downstream investment' means downstream investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.

9.2 Prohibition

9.2.1 No person resident in India other than an Indian entity can receive Indirect Foreign Investment.

9.3 Conditions for downstream investment that is treated as Indirect Foreign Investment for the investee Indian Entity

9.3.1 An Indian entity which has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines and other FDI linked performance conditions as applicable for foreign investment.

9.3.2 Downstream investment by an LLP which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors

where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

9.3.3 Indirect foreign Investment is permitted in an LLP in sectors where foreign investment is allowed 100% under automatic route and there are no FDI linked performance conditions.

9.3.4 If the sponsors/ managers/ investment managers of an investment vehicle are individuals, for the downstream investment made by such investment vehicle not to be considered as Indirect Foreign Investment for the investee, the sponsors/ managers/ investment managers of the investment vehicle should be resident Indian citizens. In case the sponsor/ manager/ investment manager is organised in any other form, SEBI will determine whether it is foreign owned and/ or controlled or not.

9.3.5 The downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity should have the approval of the Board of Directors as also a Shareholders' Agreement, if any, of the investing Indian entity.

9.3.6 The Indian entity making the downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity is required to bring in the requisite funds from abroad and not use funds borrowed in the domestic markets. Subscription by persons resident outside India to non-convertible debentures issued by an Indian company will not be construed as funds borrowed/ leveraged in the domestic market. However, raising of debt and its utilisation will have to comply with the Act and the rules or regulations made thereunder.

9.3.7 Downstream investments which is treated as Indirect Foreign Investment for the investee Indian entity can be made through internal accruals. For this purpose, internal accruals will mean profits transferred to reserve account after payment of taxes.

9.3.8 When a company which does not have any operations makes downstream investment which is treated as Indirect Foreign Investment for the investee Indian entity or commences business(s), it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

9.4 Downstream investment/s under Corporate Debt Restructuring (CDR), mechanism

9.4.1 With effect from July 31, 2012, downstream investment/s made by a banking company (as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, incorporated in India) which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, will not be considered as indirect foreign investment.

9.4.2 Strategic downstream investment by a banking company referred to at 9.4.1 above will be considered as indirect foreign investment for the investee company.

9.5. Guidelines for calculation of total foreign investment in Indian companies

9.5.1 Any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment.

9.5.2 FCCBs and DRs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.

9.5.3 The methodology for calculating total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.

9.5.4 For the purpose of downstream investment, the portfolio investment held as on March 31 of the previous financial year in the Indian company making the downstream investment will be considered for computing the total foreign investment of the investee Indian entity.

9.5.5 The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment

9.6 Conditions for exit

9.6.1 Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to:

- (a) a person resident outside India, subject to reporting requirements in Form FCTRS. However, pricing guidelines will not apply for such a transfer.
- (b) a person resident in India subject to adherence to pricing guidelines.
- (c) an Indian company with foreign investment and not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India. Pricing and reporting guidelines will not apply.

9.6.2 The instructions at 9.6.1 above will be construed accordingly for an LLP.

9.7 Responsibility for compliance

9.7.1 The first level Indian company making downstream investment will be responsible for ensuring compliance with the provisions of these rules for the downstream investment made by it at second level and so on and so forth. Such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis. Such compliance of FEMA provisions shall be mentioned in the Director's report in the Annual Report of the Indian company.

9.7.2 In case the statutory auditor has given a qualified report, the same should be immediately brought to the notice of the Regional Office of the RBI in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

9.7.3 The instructions at 9.7.1 above will be construed accordingly for an LLP

9.8 Applicability of downstream investment guidelines

9.8.1 Downstream investment which is treated as indirect foreign investment for the investee Indian entity made prior to February 13, 2009 would not require any modification to conform to NDI Rules. All other investments, after the said date, would come under its ambit.

9.8.2 Downstream investments which is treated as indirect foreign investment for the investee Indian entity made between February 13, 2009 and June 21, 2013 which was not in conformity with the downstream investment guidelines should have been intimated to the RBI by October 3, 2013 for treating such cases as compliant with NDI Rules.

10. Taxes and remittance of sale proceeds

10.1 Taxes

10.1.1 All transaction relating to foreign investment in India are required to be undertaken through banking channels in India and are subject to payment of applicable taxes and other duties/ levies in India.

10.2 Remittance of sale proceeds

10.2.1 Remittance of sale proceeds of an Indian security held by a person resident outside India will have to be made only in accordance with NDI Rules.

10.2.2 An authorised dealer bank may permit the remittance of sale proceeds of a security (net of applicable taxes) to the seller resident outside India provided:

- (a) the security was held by the seller on repatriation basis; and
- (b) either the security has been sold in compliance with the pricing guidelines or the RBI's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof.

**Purchase/ Sale of equity instruments of an Indian company
by a person resident outside India**

1. Purchase/ sale of equity instruments of an Indian company by a person resident outside India

1.1 Issue by an Indian company

An Indian company is permitted to issue equity instruments to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities specified for foreign investment;

1.2 Purchase on a stock exchange in India

A person resident outside India may purchase equity instruments of a listed Indian company on a stock exchange in India provided:

- (a) The person resident outside India making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control;
- (b) The amount of consideration is paid as per the mode of payment prescribed in this annex or out of the dividend payable by the Indian investee company in which the person resident outside India has acquired and continues to hold control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, provided the right to receive dividend is established and the dividend amount has been credited to an SNRR account opened in terms of [Foreign Exchange Management \(Deposit\) Regulations, 2016](#) for acquisition of shares on the recognised stock exchange.

1.3 Issue by a wholly owned subsidiary

1.3.1 A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed under the automatic route and there are no FDI linked performance conditions, may issue equity instruments to the said non-resident entity against pre-incorporation/ preoperative expenses incurred by the said non-resident entity up to a limit of five per cent of its authorised capital (as defined in the Companies Act, 2013) or USD 500,000 whichever is less, subject to the following conditions:

- (a) Form FC-GPR, as prescribed in the Master Direction on Reporting as amended from time to time, is filed by the Indian company within thirty days from the date of issue of equity instruments but not later than one year from the date of incorporation.
- (b) A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/ pre-operative expenses against which equity

instruments have been issued has been utilized for the purpose for which it was received should be submitted with the Form FC-GPR.

1.3.2 Pre-incorporation/ pre-operative expenses will include amounts remitted to the investee Company's account or to the investor's account in India if it exists or to any consultant or attorney or to any other material/ service provider for expenditure relating to incorporation or necessary for commencement of operations.

1.4 Other modes of issue

1.4.1 An Indian company may issue equity shares (excluding partly paid shares) to a person resident outside India against any funds payable by it to such person, the remittance of which is permitted under the Act or the rules or the regulations framed or directions issued thereunder or does not require prior permission of the Central Government or the RBI under the Act or the rules or the regulations framed or directions issued thereunder subject to the following conditions:

- (a) Issue of such shares that require Government approval or import dues deemed as ECB or trade credit or payables against import of second hand machinery will be dealt in accordance with respective guidelines;
- (b) The issue of such shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes

1.4.2 An Indian company may issue equity shares (other than partly paid shares) to a person resident outside India against any funds payable by it to such person, the remittance of which has been permitted by the RBI under the Act or the rules or the regulations framed or directions issued thereunder.

1.4.3 In case where permission has been granted by the RBI for making remittance as stated at 1.4.2 above, the Indian company may issue equity shares (other than partly paid shares) against such remittance provided all regulatory actions with respect to the delay or contravention under the Act or the rules or the regulations framed thereunder have been completed.

1.4.4 An Indian company may issue equity instruments to a person resident outside India under automatic route if the Indian investee company is engaged in a sector under automatic route or with prior Government approval if the Indian investee company is engaged in a sector under Government route against:

- (a) Swap of equity instruments;
- (b) Import of capital goods/ machinery/ equipment (excluding second-hand machinery) subject to the following conditions:
 - (i) The import of capital goods, machineries, etc., made by a person resident in India, is in accordance with the Foreign Trade Policy notified by the Directorate General of Foreign Trade (DGFT) and the regulations on imports issued under the Act;
 - (ii) There is an independent valuation of the capital goods/ machineries/ equipment by a third party entity, preferably 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;

- (iii) In case of applications submitted for Government approval:
 - a) The applications should be accompanied by documents evidencing 1.4.4(b)(ii) above and a special resolution of the company;
 - b) The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and
 - c) Applications (complete in all respects) for capitalization should be submitted within 180 days from the date of shipment of goods.
- (c) Pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to the following conditions:
 - (i) Verification and certification of the pre-incorporation/ pre-operative expenses by the statutory auditor;
 - (ii) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred;
 - (iii) 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 the Act or the rules or the regulations framed thereunder; and
 - (iv) In case of applications submitted for Government approval:
 - a) The applications should be accompanied by documents evidencing 1.4.4(c)(i), (ii) and (iii) above and a special resolution of the company.
 - b) The application (complete in all respects) for capitalization being made within a period of 180 days from the date of incorporation of the company.

2. Mode of payment, issue of equity instruments and refund

2.1 The amount of consideration should be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

2.2 The amount of consideration will include issue of equity shares by an Indian company against any funds payable by it to the investor and also swap of equity instruments where the Indian investee company is engaged in an automatic route sector.

2.3 If the equity instruments are not issued by the Indian company within sixty days from the date of receipt of the consideration, the amount so received has to be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within fifteen days from the date of completion of sixty days.

2.4 In case of partly paid equity shares, the period of 60 days will be reckoned from the date of receipt of each call payment. The forfeiture of the amount paid upfront on non-payment of call money shall be in accordance with the provisions of the Companies Act, 2013 and Income Tax Act, 1961 as applicable

2.5 Refund may be permitted by an authorised dealer provided it is satisfied:

- (a) with the bonafides of the applicant;
- (b) that the funds were received as per the mode of payment prescribed in para 2.1 above;
- (c) that no part of remittance represents interest on the funds received.

2.6 Prior approval of the RBI will be required for payment of interest, if any, as laid down in the Companies Act, 2013, for delay in refund of the amount so received. Non-compliance of instructions at 2.3 above shall be a contravention of NDI Rules notwithstanding the fact that interest for delayed refund has been paid as per Companies Act, 2013.

2.7 The Indian company issuing equity instruments stated in this annex is permitted to open a foreign currency account with an Authorised Dealer in India in accordance with [Foreign Exchange Management \(Foreign currency accounts by a person resident in India\) Regulations, 2015](#).

3. Remittance of sale proceeds

3.1 The sale proceeds (net of taxes) of the equity instruments can be remitted outside India or credited to the NRE/ FCNR(B) account of the person concerned.

Investments by Foreign Portfolio Investors

1. Purchase/ sale of equity instruments

1.1 A Foreign Portfolio Investor (FPI) may purchase or sell equity instruments of an Indian company on a recognised stock exchange in India.

1.2 The total holding by each FPI or an investor group as referred in SEBI (FPI) Regulations, 2014, should be less than 10 per cent of the total paid-up equity capital on a fully diluted basis or less than 10 per cent of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company and the total holdings of all FPIs put together should not exceed 24 per cent of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or warrants. The limit of 10 percent and 24 percent will be called individual and aggregate limit, respectively.

1.3 The aggregate limit of 24 percent may be increased by the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively.

1.4 In case the total holding of an FPI increases to 10 percent or more of the total paid-up equity capital on a fully diluted basis or 10 per cent or more of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company, the total investment so made by the FPI will be re-classified as FDI subject to the conditions as specified by SEBI in this regard and the investee company and the investor complying with the reporting requirements prescribed in FEMA 395.

1.5 For arriving at the ceiling on holdings of FPI, equity instruments acquired both through primary as well as secondary market will be included. However, the ceiling will not include investment made by the FPI through off-shore Funds, Global Depository Receipts and Euro-Convertible Bonds.

1.6 An FPI is permitted to purchase equity instruments of an Indian company through public offer/ private placement, subject to the individual and aggregate limits and the conditions specified below:

- (a) in case of Public Offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and
- (b) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable

1.7 An FPI may undertake short selling as well as lending and borrowing of securities as permitted by the RBI and SEBI subject to the following conditions:

- a) The short selling of equity shares by FPIs is permitted for equity shares of those companies where there is at least 2% headroom available for total foreign investment and/or aggregate FPI limit or is not in the caution list or ban list published by the RBI or any restrictive list published by any authority designated to do so by the RBI or SEBI.
- b) Borrowing of equity shares by FPIs will only be for the purpose of delivery into short sale.
- c) The margin/ collateral will be maintained by FPIs as applicable in the cash and F&O segment of equity market. No interest shall be paid to the FPI on such margin/ collateral.
- d) The designated custodian banks shall separately report all transactions pertaining to short selling of equity shares and lending and borrowing of equity shares by FPIs in their daily reporting with a suitable remark (short sold/ lent/ borrowed equity shares) for the purpose of monitoring by the RBI.

1.8 Investments will be subject to the limits and margin requirements prescribed by the RBI/ SEBI.

2. Mode of payment

2.1 The amount of consideration for purchase of equity instruments should be received from abroad through banking channels through inward remittance or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

2.2 The foreign currency account and SNRR account can be used only and exclusively for transactions under this Annex.

3. Remittance of sale proceeds

The sale proceeds (net of taxes) of the investments made can be remitted outside India or may be credited to the foreign currency account or SNRR account of the FPI.

4. Saving

All investments made by deemed FPIs in accordance with the regulations prior to their registration as FPIs are valid and taken into account for computation of aggregate limits.

**Investments by Non-Resident Indian (NRI) or Overseas
Citizen of India (OCI) on repatriation basis**

1. Purchase/ sale of equity instruments

1.1 A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) is allowed to purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognised stock exchange in India, subject to the following conditions:

- (a) The purchase and sale is done through a designated authorised dealer branch;
- (b) The total holding by any individual NRI or OCI should not exceed five percent of the total paid-up equity capital on a fully diluted basis or should not exceed five percent of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together should not exceed ten percent of the total paidup equity capital on a fully diluted basis or should not exceed ten percent of the paid-up value of each series of debentures or preference shares or warrants;
- (c) the aggregate ceiling of ten per cent can be raised to twenty-four per cent if a special resolution to that effect is passed by the General Body of the Indian company;

2. Mode of payment

2.1 The amount of consideration for purchase of equity instruments should be received as an inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

2.2 The NRE account will be designated as an NRE (PIS) Account and the designated account should be used exclusively for putting through transactions permitted under this annex.

2.2.1 The specific credits permitted for the NRE (PIS) account are as follows:

- (a) Inward remittances from abroad in foreign exchange through banking channels;
- (b) Transfer from the NRI's/ OCI's other NRE accounts or FCNR (B) accounts maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#);
- (c) Sale proceeds (net of taxes) of equity instruments acquired on repatriation basis in accordance with instructions contained in this annex and sold on stock exchange; and
- (d) Dividend or income earned on investment made on repatriation basis in accordance with instructions contained in this annex.

2.2.2 The specific debits permitted for the NRE (PIS) account are as follows:

- (a) Outward remittances of dividend or income earned on investment made on repatriation basis in accordance with instructions contained in this annex;
- (b) Amounts paid on account of purchase of equity instruments on repatriation basis on stock exchanges in accordance with instructions contained in this annex;
- (c) Any charges on account of sale/ purchase of equity instruments in accordance with instructions contained in this annex; and
- (d) Remittances outside India or transfer to NRE/ FCNR (B) accounts of the NRI/ OCI or any other person eligible to maintain such accounts in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

3. Remittance of sale proceeds

The sale proceeds (net of taxes) of the equity instruments can be remitted outside India or may be credited to NRE (PIS) Account of the person concerned.

4. Saving

Any account designated as NRO (PIS) shall be re-designated as NRO account.

Investment by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Non-Repatriation basis

A. Purchase/ sale of equity instruments or convertible notes or units or contribution to the capital of an LLP

1.1 A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, is permitted to purchase/ contribute to the following on a non-repatriation basis:

- (a) Any capital instrument issued by a company without any limit either on the stock exchange or outside it.
- (b) Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
- (c) The capital of a Limited Liability Partnership without any limit.
- (d) Convertible notes issued by a startup company in accordance with NDI Rules.

1.2 The investment detailed at 1.1 above will be deemed to be domestic investment at par with the investment made by residents.

1.3 An NRI or an OCI including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, cannot invest in equity instruments or units of a Nidhi company or a company engaged in agricultural/ plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

2. Mode of Payment

2.1 The amount of consideration should be received from abroad through banking channels or paid out of funds held in NRE/ FCNR(B)/ NRO accounts maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

3. Sale/ maturity proceeds

3.1 The sale/ maturity proceeds (net of applicable taxes) of equity instruments purchased or disinvestment proceeds of an LLP should be credited only to the NRO account of the investor, irrespective of the type of account from which the consideration was paid.

3.2 The amount invested in equity instruments of an Indian company or the consideration for contribution to the capital of an LLP and the capital appreciation thereon cannot be repatriated abroad.

B. Investment in a firm or a proprietary concern

1. Contribution to capital of a firm or a proprietary concern

1.1 An NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India.

1.2 The investee firm or proprietary concern should not be engaged in any agricultural/ plantation activity or print media or real estate business i.e., dealing in land and immovable property with a view to earning profit or earning income therefrom.

2. Mode of payment

2.1 The amount of consideration should be received from abroad through banking channels or paid out of funds held in NRE/ FCNR(B)/ NRO accounts maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

3. Sale/ maturity proceeds

3.1 The disinvestment proceeds should be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid.

3.2 The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon cannot be repatriated abroad.

Investment in a Limited Liability Partnership (LLP)

1. Investment in a LLP

1.1 Foreign Investment was permitted in an LLP with effect from May 20, 2011.

1.2 A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), not being a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI), is permitted to contribute to the capital of an LLP operating in sectors/ activities where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

1.3 Investment by way of 'profit share' will fall under the category of reinvestment of earnings.

1.4 Investment in an LLP is subject to the conditions prescribed in the Limited Liability Partnership Act, 2008.

1.5 A company having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into an LLP under the automatic route.

1.6 An LLP having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into a company under the automatic route.

2. Mode of payment

2.1 Payment by an investor towards capital contribution of an LLP should be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR(B) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

3. Remittance of disinvestment proceeds

3.1 The disinvestment proceeds can be remitted outside India or may be credited to NRE or FCNR(B) account of the person concerned.

Investment by a Foreign Venture Capital Investor (FVCI)

1. Investment by Foreign Venture Capital Investor (FVCI)

1.1 Investment by an FVCI was permitted with effect from December 26, 2000

1.2 An FVCI is permitted to invest in securities (not listed on a recognised stock exchange at the time of issue), of an Indian company engaged in the following sectors:

- (1) Biotechnology
- (2) IT related to hardware and software development
- (3) Nanotechnology
- (4) Seed research and development
- (5) Research and development of new chemical entities in pharmaceutical sector
- (6) Dairy industry
- (7) Poultry industry
- (8) Production of bio-fuels
- (9) Hotel-cum-convention centres with seating capacity of more than three thousand.
- (10) Infrastructure sector. The term 'Infrastructure Sector' has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide Notification F. No. 13/06/2009-INF dated March 27, 2012 as amended/ updated.

1.3 An FVCI can invest in securities issued by a startup, irrespective of the sector in which the startup is engaged.

1.4 An FVCI can acquire units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.

1.5 Investment by an FVCI in equity instruments of an Indian company will be subject to the reporting, sectoral caps, entry routes and attendant conditions.

1.6 An FVCI may purchase the securities/ instruments permitted for it either from the issuer of these securities/ instruments or from any person holding these securities/ instruments.

1.7 An FVCI may invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000.

1.8 An FVCI may acquire/ transfer securities/ instruments permitted for it at a price that is mutually acceptable to the buyer and the seller/ issuer. In case of sale to a person resident outside India, the buyer should be an eligible acquirer.

1.9 An FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes/ funds set up by the VCFs or Cat-I AIFs.

2. Mode of payment

2.1 The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

2.2 The foreign currency account and SNRR account shall be used only and exclusively for transactions under this annex.

3. Remittance of sale/ maturity proceeds

3.1 The sale/ maturity proceeds (net of taxes) may be remitted outside India or may be credited to the foreign currency account or SNRR account of the FVCI.

Investment by a person resident outside India in an Investment Vehicle

1. Investment in units of an Investment Vehicle

1.1 A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh) is permitted, with effect from November 13, 2016, to invest in units of Investment Vehicles.

1.2 The sale/ transfer/ redemption of units acquired/ purchased in accordance with this annex are subject to the regulations framed by SEBI or the directions issued by the RBI.

1.3 An Investment vehicle can issue its units to a person resident outside India against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle.

1.4 The portfolio investment by an AIF (Cat III) which has foreign investment is restricted to the securities/ instruments permitted for FPIs under NDI Rules.

2. Mode of payment

2.1 The amount of consideration should be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose Vehicle or out of funds held in NRE or FCNR(B) account maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

3. Remittance of sale/ maturity proceeds

The sale/ maturity proceeds (net of taxes) of the units may be remitted outside India or credited to the NRE or FCNR(B) account of the person concerned.

Investment in Depository receipts by a person resident outside India

1. Issue/ transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s)

1.1 In terms of Depository Receipts Scheme, 2014 (DR Scheme, 2014), Depository Receipts can be issued against any security or unit in which a person resident outside India is allowed to invest under NDI Rules. These will be referred to as 'eligible instruments' for the purpose of this annex.

1.2 A person is permitted to issue or transfer eligible instruments to a foreign depository for the purpose of issuance of depository receipts in accordance with the DR Scheme, 2014 and guidelines issued by Central Government in this regard.

1.3 A domestic custodian can purchase eligible instruments on behalf of a person resident outside India, for the purpose of converting the instruments so purchased into depository receipts in terms of DR Scheme 2014.

1.4 The aggregate of eligible instruments which may be issued or transferred to foreign depositories, along with eligible instruments already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible instruments under the Act, rules or regulations framed thereunder.

1.5 The eligible instruments shall not be issued or transferred to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors under the applicable laws.

2. Saving

2.1 Depository Receipts issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 shall be deemed to have been issued under the corresponding provisions of DR Scheme 2014 and have to comply with the provisions laid out in this annex.

Issue of Indian Depository Receipts (IDRs)

1. Issue of IDRs

1.1 Companies incorporated outside India may issue IDRs through a Domestic Depository, to a person resident in India and a person resident outside India.

1.2 The issue of IDRs should comply with the Companies (Registration of Foreign Companies) Rules, 2014 and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;

1.3 Any issue of IDRs by financial/ banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulator(s);

1.4 IDRs shall be denominated in Indian Rupees only;

1.5 The proceeds of the issue of IDRs shall be immediately repatriated outside India by the companies issuing such IDRs.

2. Purchase/ sale of IDRs:

2.1 An FPI or an NRI or an OCI may purchase, hold or sell IDRs

2.2 NRIs or OCIs may invest in the IDRs out of funds held in their NRE/ FCNR(B) account, maintained in accordance with the [Foreign Exchange Management \(Deposit\) Regulations, 2016](#).

2.3 There would be an overall cap of USD 5 billion for raising of capital by issuance of IDRs by eligible foreign companies in Indian markets. This limit would be monitored by SEBI

3. Transfer, redemption and two way fungibility of IDRs

3.1 Redemption/ conversion of IDRs into underlying equity shares of the issuing company shall comply with the [Foreign Exchange Management \(Transfer or Issue of any Foreign Security\) Regulations, 2004](#).

3.2 IDRs shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue.

3.3 Limited two way fungibility of IDRs is permissible.

3.4 The guidelines to be followed for 3.1, 3.2 and 3.3 above are as follows:

- (a) Listed Indian companies may either sell or continue to hold the underlying shares subject to compliance with the [Foreign Exchange Management \(Transfer or Issue of any Foreign Security\) Regulations, 2004](#).

(b) Indian Mutual Funds, registered with SEBI may either sell or continue to hold the underlying shares subject to compliance with the [Foreign Exchange Management \(Transfer or Issue of any Foreign Security\) Regulations, 2004](#).

(c) Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.

3.5 The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FPIs.

Investment by other Non-resident Investors

1. Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks may purchase securities subject to such terms and conditions as may be specified by the RBI and the SEBI.
2. “Eligible Foreign Entity (EEE)” as defined in SEBI circular dated the 9th October 2018 and having actual exposure to Indian physical commodity market may participate in domestic commodity derivative markets in accordance with framework specified by the SEBI.

**List of notifications/circulars
which have been consolidated in this Master Direction**

SN	Rules/Notifications/ A.P. (DIR Series) Circulars	Date
1	Foreign Exchange Management (NDI) Rules, 2019	October 17, 2019
2	AP (DIR) Series Circular No. 14	September 16, 2003
3	FEM (NDI) (Amendment) Rules, 2019	December 05, 2019
4	FEM (NDI) (Amendment) Rules, 2020	April 22, 2020
5	FEM (NDI) (Second Amendment) Rules, 2020	April 27, 2020
6	FEM (NDI) (Amendment) Rules, 2021	August 06, 2021
7	FEM (NDI) (Second Amendment) Rules, 2021	August 19, 2021
8	FEM (NDI) (Third Amendment) Rules, 2021	October 05, 2021
9	FEM (NDI) (Fourth Amendment) Rules, 2021	October 12, 2021