

July 1, 2006

To,
All Banks Authorised to Deal in Foreign Exchange

Madam/Sir,

Master Circular on Foreign Investments in India

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

(i) **Acquisition of Immovable property** which is regulated in terms of Section 6(3) (i) of Foreign Exchange Management Act. 1999 read with Notification No. FEMA 21/ 2000-RB dated May 3, 2000.

and

(ii) **Investment in capital of partnership firms or proprietary concern** which is regulated in terms of Section 2(h) of Section 47 of Foreign Exchange Management Act. 1999, read with Notification No. FEMA 24/2000-RB dated May 3, 2000.

2. This Master Circular consolidates the existing instructions in respect of above areas in one place. The list of underlying circulars/notifications is furnished in Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2007 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(M. Sebastian)
Chief General Manager

INDEX

<u>PART – I</u>	3
<u>1. Foreign Investments in India</u>	3
<u>2. Prohibition on investment in India</u>	3
<u>3. Permitted Investments in India</u>	3
<u>4. Eligibility for Investing in India</u>	3
<u>5. Nature of Investments</u>	4
<u>6. General Permissions granted under the Regulations</u>	5
<u>7. Reporting</u>	6
<u>8. Issue of shares by Indian companies under ADR / GDR</u>	6
<u>A. For listed companies</u>	7
<u>B. For unlisted companies</u>	8
<u>9. Issue Price</u>	9
<u>10. Permission for retaining share subscription money received from persons resident outside India in a foreign currency account</u>	9
<u>11. Portfolio Investment Scheme</u>	9
<u>12. Investments by Overseas Corporate Bodies (OCBs)</u>	12
<u>13. Transfer of Shares and convertible debentures - Non-resident to Resident / Resident to Non-Resident - General Permission</u>	13
<u>14. Purchase of other securities</u>	16
<u>15. Investments by Venture Capital Funds</u>	17
<u>16. Conversion of ECB / Lumpsum Fee/Royalty into Equity</u>	17
<u>17. Remittance of sale proceeds</u>	18
<u>TABLE</u>	19
<u>Investments Facilities in Brief</u>	19
<u>PART II</u>	20
<u>1. Acquisition and Transfer of Immovable Property in India</u>	20
<u>2. Purchase / Sale of Immovable Property by Foreign Embassies / Diplomats / Consulate General</u>	20
<u>3. Acquisition of Immovable Property for carrying on a permitted activity</u>	21
<u>4. Repatriation of sale proceeds</u>	21
<u>5. Prior permission for acquisition or transfer of immovable property in India by citizens of certain countries</u>	21
<u>PART III</u>	23
<u>1. Investment in a firm or a proprietary concern in India by a person resident outside India</u>	23
<u>2. Investment in sole proprietorship concern / partnership firm with repatriation benefits</u>	23
<u>3. Investment by non-residents other than NRIs / PIO</u>	23
<u>4. Restrictions</u>	23
<u>ANNEX-3</u>	33
<u>ANNEX-4</u>	38
<u>ANNEX-5</u>	39
<u>APPENDIX</u>	40

Part – I

1. Foreign Investments in India

Foreign Investments in India attract provisions of Section 6 of the Foreign Exchange Management Act (FEMA) 1999 and are subject to the Regulations issued by Reserve Bank of India under the Act. The Regulations have been notified vide Notification No. FEMA 20/2000-RB dated May 3,2000 and amended from time to time vide various Notifications listed in Annex-4. The regulations stipulate that an Indian entity cannot issue any security to a person resident outside India or record in its books any transfer of security from or to such person except as provided in the Act or Rules or Regulations issued under the Act, or with the specific permission of the Reserve Bank.

2. Prohibition on investment in India

No person resident outside India can make investment in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not which is engaged or proposes to engage in the following activities

- (i) Business of chit fund, or
- (ii) Nidhi Company , or
- (iii) Agricultural or plantation activities or
- (iv) Real estate business, or construction of farm houses
- (v) Trading in Transferable Development Rights (TDRs).

It is clarified that Real Estate Business does not include development in townships, construction of residential/commercial premises, roads or bridges. In addition to the above, FDI is also prohibited in certain activities, a list of which is given in Annex-1.

3. Permitted Investments in India

In sectors other than those prohibited above, investments can be made either with the specific prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) or under the Automatic Route. Entry route for foreign investors as well as sector-specific investment limits in India are given in Annex-2.

While the nature of investment activities have been prescribed in the FEMA Regulations, the scope of these activities especially regarding investments by non-residents under the Government approval route have been detailed in the Government Manual on Investing in India - Foreign Direct Investment, Policy & Procedures. This document is available in public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department of Industrial Policy and Promotion— www.dipp.nic.in

4. Eligibility for Investing in India

A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an incorporated entity outside India, (other than an entity incorporated in Pakistan or Bangladesh) has general permission to purchase shares or convertible debentures or preference shares of an Indian company subject to certain terms and conditions listed in this Circular under specific heads.

5. Nature of Investments

5.1 Indian companies have general permission to issue equity / preference / convertible preference shares and convertible debentures subject to certain conditions.

5.2 A company which is a small scale industrial unit and which is not engaged in any activity or in manufacture of items which are prohibited under the FDI policy, may issue shares or convertible debentures to a non-resident, to the extent of 24 per cent of its paid-up capital. Such a company may issue shares in excess of 24 per cent of its paid-up capital if

- a) It has given up its small scale status,
- b) It is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and
- c) It complies with the ceilings specified in Annex-2.

5.3 An Export Oriented Unit or a unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park may issue shares or convertible debentures to a person resident outside India in excess of 24 per cent provided it conforms to the ceilings specified in Annex-2.

5.4 Foreign Direct Investments in Asset Reconstruction Companies (ARCs)

Persons / entities resident outside India (other than Foreign Institutional Investors (FIIs)), eligible under the Foreign Direct Investment (FDI) Scheme for investing in India are permitted to invest in the equity capital of Asset Reconstruction Companies (ARCs) registered with the Reserve Bank of India. Such investments have to be strictly in the nature of FDI and investments by FIIs are not permitted. Automatic Route is not available for such investments. The applications are considered by FIPB subject to the following conditions:

- (a) Maximum foreign equity shall not exceed 49 per cent of the paid up equity capital of the ARC.
- (b) Where investment by any individual entity exceeds 10 per cent of the paid up equity capital, ARC should comply with the provisions of Section 3 (3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act or Securitisation Act), which states that a sponsor, shall not be a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such

securitisation company or reconstruction company; for the purpose of obtaining registration from RBI.

General permission has been granted to FII's registered with SEBI to invest in Security Receipts (SRs) issued by ARCs registered with RBI. FII's can invest upto 49 per cent of each tranche of scheme of SRs subject to condition that investment of a single FII in each tranche of scheme of SRs shall not exceed 10 per cent of the issue. ¹

6. General Permissions granted under the Regulations

6.1 Issue of Rights / Bonus shares

General permission has been granted to Indian companies for issuing Right / Bonus shares to existing non-resident share-holders, subject to adherence to sectoral cap. The offer on right basis has to be made at a price not lower than what is being offered to the resident shareholder. It may be noted that entitlement of rights shares is not automatically available to investors who had been allotted such shares as Overseas Corporate Bodies (OCBs) under the then applicable Regulations. OCBs have been de-recognised as a class of investors from September 16, 2003 onwards. Therefore, Companies desiring to issue rights shares to such erstwhile OCBs will have to take specific permission from RBI, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai. However, bonus shares can be issued to OCBs.

Existing non-resident shareholders are allowed to apply for issue of additional equity shares or preference shares or convertible debentures over and above their rights entitlements and the investee company can allot the same subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

6.2 Acquisition of shares under Scheme of Amalgamation / merger

Where a scheme of merger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company may issue shares to the shareholders of the transferor company, resident outside India subject to ensuring that the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the FEMA regulations and Government approval / Court order. The transferor company or the transferee or new company shall not be engaged in activities prohibited in terms of FDI policy.

6.3 Issue of shares under Employees Stock Option Scheme

An Indian company may issue shares under the Employees Stock Option Scheme, to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than citizens of Pakistan and Bangladesh, directly or through a

¹ A.P. (DIR Series) Circular No.16 dated November 11, 2005

Trust subject to the condition that the scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India and face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company. The issuing company is required to report the details and submit stipulated certificate to Reserve Bank, within 30 days from the date of issue of shares.

7. Reporting

7.1 Advance Reporting

An Indian company issuing shares or convertible debentures as bonus, rights or as stock options to persons resident outside India directly or on amalgamation / merger with an existing Indian company in accordance with these Regulations, should submit to Reserve Bank the details of advance remittance, not later than 30 days from the date of receipt of the amount of consideration, giving details regarding

- ◆ Name and address of the foreign investors
- ◆ Date of receipt of funds and their rupee equivalent
- ◆ Name and address of the authorised dealer through whom the funds have been received, and
- ◆ Details of Government approval, if any

7.2 Reporting Issue of Shares

After issue of shares the Indian company has to file a report in Form FC-GPR not later than 30 days from the date of issue of shares with the Regional Office of RBI under whose jurisdiction the registered office of the company is situated.

8. Issue of shares by Indian companies under ADR / GDR

8.1 An Indian corporate can raise foreign currency resources abroad through the issue of American Depository Receipts (ADRs) or Global Depository Receipts (GDRs). The Indian company is allowed to issue its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing GDRs and / or ADRs, subject to the conditions that:

- the ADRs / GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time
- The Indian company issuing such shares has obtained an approval from the Ministry of

Finance, Government of India to issue such ADRs and / or GDRs or is eligible to issue ADRs / GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and

- Is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations.

These instruments are issued by a Depository abroad and listed in the overseas stock exchanges like NASDAQ. The proceeds so raised have to be kept abroad till actually required in India. There are no end use restrictions except for a ban on deployment / investment of such funds in Real Estate or the Stock Market. There is no monetary limit upto which an Indian company can raise ADRs / GDRs. However, the Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy and the foreign shareholding after issue should be in compliance with the FDI policy.

8.2 The ADR / GDR can be issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The Indian company will issue its rupee denominated shares in the name of the Overseas Depository and will keep the shares in the custody of a domestic Custodian in India. On the basis of the ratio worked out and the rupee shares kept with the domestic Custodian, the Overseas Depository will issue ADRs / GDRs abroad.

8.3 In order to bring the ADR / GDR guidelines in alignment with SEBI's guidelines on domestic capital issues, Government of India has issued the following additional guidelines on ADRs / GDRs under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme:-

A. For listed companies

a) Eligibility of issuer: An Indian Company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue (i) Foreign Currency Convertible Bonds (FCCBs) and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

b) Eligibility of subscriber: Erstwhile Overseas Corporate Bodies (OCBs) who are not eligible to invest in India through the portfolio route and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

c) **Pricing:** The pricing of ADR / GDR / FCCB issues should be made at a price not less than the higher of the following two averages:

- (i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date;
- (ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

The “relevant date” means the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81 (IA) of the Companies Act, 1956, to consider the proposed issue.

d) **Voting rights:** Voting rights shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR / GDR issues shall be consistent with the Company Law provisions. RBI regulations regarding voting rights in the case of banking companies will continue to be applicable to all shareholders exercising voting rights.

B. For unlisted companies

Unlisted companies, which have not yet accessed the ADR / GDR / FCCB route for raising capital in the international market would require prior or simultaneous listing in the domestic market, while seeking to issue (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depositary Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993.

It has been clarified by the Government that unlisted companies, which have already issued ADRs / GDRs / FCCBs in the international market, would now require to list in the domestic market on making profit beginning financial year 2005-06 or within three years of such issue of ADRs / GDRs / FCCBs, whichever is earlier.²

8.4 A limited Two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this scheme, a stock broker in India, registered with SEBI, can purchase the shares from the market for conversion into ADRs /GDRs. Re-issuance of ADRs /GDRs would be permitted to the extent of ADRs / GDRs which have been redeemed into underlying shares and sold in the Indian market.

8.5 An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company

² AP (DIR Series) Circular No. 11 dated September 5, 2005

so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue is remitted back to India and distributed among the resident investors who had offered their rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the shareholders who have tendered such shares for conversion into ADR / GDR.

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

8.7 Reporting of such Issues

The Indian company issuing ADRs / GDRs shall furnish to the Reserve Bank, full details of such issue in the form specified in Annexure C to Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return in the form specified in Annexure D, therein, to Reserve Bank within 15 days of the close of the calendar quarter.

9. Issue Price

Price of shares issued to persons resident outside India under the FDI Scheme, would be worked out on the basis of SEBI guidelines in case of shares of listed companies. In case of unlisted companies, valuation of shares has to be done by a Chartered Accountant in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

10. Permission for retaining share subscription money received from persons resident outside India in a foreign currency account

Indian companies which are eligible to issue shares to persons resident outside India under the FDI policy is allowed to retain the share subscription amount in a foreign currency account, with the prior approval of RBI, subject to such terms and conditions as RBI may stipulate.

11. Portfolio Investment Scheme

11.1 FIIs registered with SEBI and Non-resident Indians are eligible to purchase the shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme. The FII should apply to the designated Authorised Dealer bank, who may then grant permission to the FII for opening a foreign currency account and/or a Non Resident Rupee Account.

NRIs should apply to the concerned designated branch of the AD authorised by RBI to administer the Portfolio Investment Scheme (PIS) for permission to open a NRE/NRO account under the Scheme.

11.2 Investment by Foreign Institutional Investors

11.2.1 A SEBI registered FII / sub-account is permitted to open a Foreign Currency denominated Account and / or a Special Non-Resident Rupee Account and to transfer sums from the foreign currency account to the rupee account for making genuine investments in the securities in terms of the SEBI (FII) Regulations, 1995. The sums may be transferred from foreign currency account to rupee account at the prevailing market rate and the Authorised Dealer bank may transfer repatriable proceeds (after payment of tax) from the rupee account to the foreign currency account. The Special Non-Resident Rupee Account may be credited with the proceeds of sale of shares / debentures, dated Government securities, Treasury Bills etc., dividend, income received by way of interest, forward contracts booked etc., by compensation received towards sale / renouncement of right offerings of shares and income earned on securities lent under SEBI's Securities Lending Scheme, 1997 after deduction of appropriate tax, if any. Such credits are allowed, subject to the condition that the Authorized Dealer bank should obtain confirmation from the investee company / FII concerned that tax at source, wherever necessary, has been deducted from the gross amount of dividend / interest payable / approved income to the share / debenture / Government securities holder at the applicable rate, in accordance with the Income Tax Act. The Special Non-Resident Rupee Account may be debited for purchase of shares / debentures, dated Government securities, Treasury Bills etc., and for payment of fees to applicant FIIs' local Chartered Accountant / Tax Consultant where such fees constitute an integral part of their investment process.

11.2.2 In the case of FIIs, the total holding of each FII / SEBI approved sub account shall not exceed 10 per cent of the total paid up capital or 10 per cent of the paid up value of each series of convertible debentures issued by an Indian company and the total holdings of all FIIs / sub-accounts of FIIs put together shall not exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. This limit of 24 per cent can be increased to the sectoral cap / statutory limit as applicable to the Indian company concerned, by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body. FIIs are not permitted to invest in equity issued by an Asset Reconstruction Company.

11.2.3 SEBI registered FII are allowed to trade in all exchange traded derivative contracts on the stock exchanges in India subject to the position limits as prescribed by SEBI from time to time. The SEBI registered FII / sub-account may open a separate sub-account of their Special Non-Resident Rupee Account through which all receipts and payments pertaining to trading / investment in exchange traded derivative contracts including initial margin and mark to market settlement, transaction charges, brokerage etc., will be made. Further transfer between the Special Non-Resident Rupee Account and the sub account maintained for the purpose of trading in exchange traded derivative contracts can be freely made. However, repatriation of the rupee amount will be made only through their Special Non-Resident Rupee Account subject to payment of relevant taxes. The Authorised Dealer banks have to keep proper records of the

sub account and submit them to Reserve Bank as and when required. AD banks can also offer forward cover to FIIs to the extent of total inward remittance net of liquidated investments.

11.2.4. SEBI registered FIIs / sub-accounts are allowed to keep with the Trading Member / Clearing Member amount sufficient to cover the margins prescribed by the Exchange / Clearing House and such amounts as may be considered necessary to meet the immediate needs.

11.2.5. SEBI registered FIIs have been permitted to purchase shares / convertible debentures of an Indian company through offer/private placement. This is subject to applicable ceiling as indicated in Schedule 2 to Notification No. FEMA 20/2000-RB dated May 3, 2000. Indian company is permitted to issue such shares provided that:

- (i) in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents and
- (ii) in the case of issue by private placement, the price is not less than the price arrived at in terms of SEBI guidelines or guidelines issued by the erstwhile Controller of Capital Issues, as applicable. Purchases can also be made of PCDs / FCDs/ Right Renunciations / Warrants / Units of Domestic Mutual Fund Schemes.

11.2.6. FII shall not engage in short selling and shall take delivery of securities purchased and give delivery of securities sold. There shall be no squaring off of transactions during the no-delivery period of a security.

11.2.7. The SEBI registered FII shall restrict allocation of its total investment between equities and debt in the Indian capital market in the ratio of 70:30. The FII may form a 100% debt fund and get such fund registered with SEBI. Investment in debt securities by FIIs are subject to limits, if any, stipulated by SEBI in this regard.

11.2.8. It is clarified that an FII may invest in a particular issue of an Indian company either under Schedule 1 (i.e. FDI Scheme) or Schedule 2 (i.e. Portfolio Investment Scheme). The AD banks may ensure that the FIIs who are purchasing the shares by debit to the special rupee accounts report these details separately in the LEC (FII) returns. The company who has issued the shares to the FIIs under Schedule 1 (FDI) (for which the payment has been received directly into company's account) and under Schedule 2 (for which the payment has been received from FIIs account maintained with an Authorised Dealer bank in India) should report these figures separately under item 4(b) of the FC-GPR return so that the details could be suitably reconciled for statistical / monitoring purposes.

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

Chief General Manager, Foreign Exchange Department, Reserve Bank of India, Foreign Investment Division, Central Office, Central Office Building, Mumbai 400 001 to monitor the overall ceiling / sectoral cap / statutory ceiling. When the total holdings of FII's reach within 2 per cent of the applicable limit, Reserve Bank will issue a notice to all designated branches of Authorised Dealer banks stating that any further purchases of shares of the said company require prior approval of Reserve Bank. No purchases shall be made once the prescribed overall ceiling / sectoral cap / statutory limit is reached.³

11.3. Investments by Non Resident Indians (NRIs)

11.3.1 In the case of NRIs under Portfolio Investment Scheme (PIS) it is to be ensured that the paid-up value of shares / convertible debentures purchased by an NRI on repatriation and non-repatriation basis under PIS route should not exceed 5 per cent of the paid up capital / paid up value of each series of debentures. The aggregate paid-up value of shares / convertible debentures purchased by all NRIs should not exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent, if the General Body of the Indian company passes a special resolution to that effect. The NRI investor should take delivery of the shares purchased and give delivery of shares sold. Payment for purchase of shares and/or debentures is made by inward remittance in foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained in India if the shares are purchased on repatriation basis and by inward remittance or out of funds held in NRE / FCNR / NRO account of the NRI concerned, maintained in India where shares / debentures are purchased on non-repatriation basis.

11.3.2 The link office of the designated branch of an AD bank shall furnish to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Central Office, Mumbai a report on a daily basis on PIS transactions undertaken by it, such report can be furnished on-line or on a floppy in a format supplied by RBI.

11.3.3 Shares purchased by NRIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement to a person resident in India or outside India without prior approval of RBI.

11.3.4 NRIs are allowed to invest in Exchange Trade Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India on non-repatriation basis subject to the limits prescribed by SEBI.

12. Investments by Overseas Corporate Bodies (OCBs)

³ AP (DIR Series) Circular No. 53 dated December 17, 2003

12.1 With effect from November 29, 2001, OCBs are not permitted to invest under the PIS in India. Further, the OCBs which have already made investments under the Portfolio Investment Scheme, may continue to hold such shares / convertible debentures till such time these are sold on the stock exchange.

12.2 OCBs have been de-recognised as a class of investors in India with effect from September 16, 2003. However, requests from such entities which are incorporated and not under the adverse notice of RBI / SEBI will be considered for undertaking fresh investments under FDI scheme with prior approval of Government if the investment is under Government route and with the prior approval of RBI if the investment is under automatic route.

13. Transfer of Shares and convertible debentures - Non-resident to Resident / Resident to Non-Resident - General Permission

13.1 General permission has been granted to non-residents / NRIs for transfer of shares and convertible debentures of an Indian company as under:-

- A person resident outside India (Other than NRI and OCB) may transfer by way of sale or gift the shares or convertible debentures to any person resident outside India (including NRIs); provided transferee has obtained prior permission of SIA/FIPB to acquire the shares if he has previous venture or tie-up in India through investment in shares or convertible debentures or a technical collaboration or a trade mark agreement in the same field in which the Indian company whose shares are being transferred, is engaged. The restriction is not applicable to the transfer of shares to International Financial Institutions (i.e. ADB, IFC, CDC, DEG) and transfer of shares to Indian company engaged in Information Technology Sector.
- NRIs and erstwhile OCBs may transfer by way of sale or gift the shares or convertible debentures held by him or it to another Non-resident Indian; provided transferee has obtained prior permission of SIA/FIPB to acquire the shares if he has previous venture or tie-up in India through investment in shares or convertible debentures or a technical collaboration or a trade mark agreement in the same field in which the Indian company whose shares are being transferred, is engaged. The restriction is not applicable to the transfer of shares to International Financial Institutions (i.e. ADB, IFC, CDC, DEG) and transfer of shares to Indian company engaged in Information Technology Sector.
- A person resident outside India may transfer any security to a person resident in India by way of gift.
- A person resident outside India may sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker.
- A person resident in India may transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than

financial service sector (i.e. Banks, NBFC, ARCs and Insurance) to a person resident outside India, subject to the guidelines given in Annex 3.

- General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in Annex 3.
- The above General Permission also covers transfer by a resident to a non-resident of shares / convertible debentures of an Indian company, engaged in an activity earlier covered under FIPB / SIA route but now falling under Automatic Route of RBI, as well as transfer of shares by a non-resident to an Indian company under buy-back and / or capital reduction scheme of the company.⁴ However, this General Permission is not available for transfer of shares / debentures of an entity engaged in any activity in the financial service sector (i.e. Banks, NBFCs, ARCs and Insurance),

13.2 Prior permission of RBI in certain cases for transfer of shares/convertible debentures

◆ A person resident in India, who proposes to transfer to a person resident outside India any security, by way of gift, is required to obtain prior approval from Reserve Bank. Reserve Bank considers the following factors while processing such applications :

- The transferee (donee) is eligible to hold such security under Schedule 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.
- The gift does not exceed 5 per cent of the paid-up capital of the Indian company / each series of debentures/each mutual fund scheme.
- The applicable sectoral cap / foreign direct investment (FDI) limit in the Indian company is not breached.
- The transferor (donor) and the transferee (donee) are close relatives as defined in section 6 of the Companies Act, 1956, which is reproduced in Annex 3.
- The value of security to be transferred together with any security transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year**.
- Such other conditions as considered necessary in public interest by the Reserve Bank.
- Applications in this regard can be submitted to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, 11th floor, Fort, Mumbai 400 001 along with the documents prescribed in Annex-4.⁵

⁴ AP (DIR Series) Circular No. 10 dated August 30, 2005

⁵ AP (DIR Series) Circular No. 8 dated August 25, 2005

- ◆ A person resident in India who proposes to transfer any share or convertible debenture of an Indian company engaged in financial sector (i.e. Banks, NBFCs, Asset Reconstruction Companies and Insurance), and which attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, etc., by way of sale to a person resident outside India will have to obtain prior approval of FIPB, Ministry of Finance & Company Affairs, Government of India followed by permission from RBI. The above two stage approval is applicable even when the transfer is made on non-repatriation basis.

14. Purchase of other securities

14.1 There is no limit on NRI purchasing shares/ convertible debentures issued by an Indian company on non-repatriation basis whether by public issue or private placement. Amount of consideration for such purchase shall be paid by inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR / NRO account maintained with the AD bank.

NRI can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds.

Government has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF.

14.2 Foreign Institutional Investors can buy dated Government securities / treasury bills, non-convertible debentures /bonds issued by Indian companies and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India. These purchases are subject to limits as notified by SEBI.

14.3 A Multilateral Development Bank which is specifically permitted by Government of India to float rupee bonds in India can purchase Government dated securities.

14.4 NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in **free foreign exchange** through normal banking channels or by debit to their NRE/ FCNR(B) accounts of NRIs.

In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

14.5 Foreign Investment in Tier I and Tier II instruments issued by banks in India

FII registered with SEBI and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India, subject to the following conditions.

- a) Investment by all FIIs in Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII should not exceed the limit of 10 per cent of each issue.

- b) Investments by all NRIs in Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of the issue.
- c) Investment by FIIs in Debt capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt.
- d) Investment by NRIs in Debt capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.

The issuing banks are required to ensure compliance with the conditions stipulated above at the time of issue. They are also required to comply with the guidelines notified by the Department of Banking Operations and Development (DBOD), Reserve Bank of India, from time to time.

The issue-wise details of amount raised as Perpetual Debt Instruments qualifying for Tier I capital by the bank from FIIs / NRIs are required to be reported in the prescribed format within 30 days of the issue to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai 400 001. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated banks respectively, to the Reserve Bank of India through the soft copy of the LEC Returns, on a daily basis, as prescribed in Schedule 2 and 3 of Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time. ⁶

15. Investments by Venture Capital Funds

A SEBI registered Foreign Venture Capital Investor (FVCI) with general permission from RBI under FEMA Regulations can invest in Indian Venture Capital Undertaking (IVCU) or in a Venture Capital Fund(VCF) or in a Scheme floated by such VCFs **subject to the condition that the VCF should also be registered with SEBI.** They can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement or in units of schemes / funds set up by a VCF. RBI, on application, may permit a FVCI to open a foreign currency account or rupee account with a designated branch of an authorised dealer bank. The purchase / sale of shares, debentures, units can be at a price that is mutually acceptable to the buyer and the seller / issuer. AD banks are also authorised to offer forward cover to FVCIs to the extent of total inward remittance net of investments liquidated.

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

⁶ AP (DIR Series) Circular No. 24 dated January 25, 2006.

16.1 General permission has been granted for conversion of ECB into equity, subject to certain conditions and reporting requirements. The conversion facility is available for ECBs availed either with general permission or specific permission of Reserve Bank. This would also be applicable to ECBs irrespective of whether due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators. However, import payables, deemed as ECBs would not be eligible for conversion.

16.2 General permission is also available for issue of shares against lump-sum technical know-how fee, royalty, under automatic route or SIA / FIPB route, subject to pricing guidelines of Reserve Bank / SEBI and compliance with applicable tax laws.

17. Remittance of sale proceeds

Remittance of sale proceeds of an Indian Security held by a person resident outside India is permissible subject to conditions stipulated in relevant Schedules to the Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. An authorised dealer bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate has been produced.

Investments Facilities in Brief

Avenues of Investment	Nature of Instruments	Category of Investors
Public / Private Limited Companies	Shares / Convertible Debentures / Preference shares	Non-Resident Indians / Non-residents / Non-Resident Incorporated Entities / Foreign Institutional Investors
Public Limited Companies	Non Convertible Debentures	NRIs, FIIs
Trading Companies	Shares/Convertible Debentures/Preference Shares	Non-residents
SSI Units	Shares/Convertible Debentures/Preference Shares	Non-residents
EOU or Unit in Free Trade Zone or in Export Processing Zone	Shares/Convertible Debentures/Preference Shares	Non-residents
Public/Private Ltd. Companies	Right Share	Existing shareholders / Renounees
Under Scheme of amalgamation/ merger	Shares/Convertible Debentures/Preference Shares	Existing shareholders
Employees Stock Option	Shares/Convertible Debentures/Preference Shares	Employees resident outside India
ADR/GDR	Depository Receipts	Non-residents
Portfolio Investment Scheme	Shares/Convertible Debentures	FIIs & NRIs
Investment in Derivatives	Exchange Traded Derivatives	FIIs (on repatriation basis) & NRIs (on non-repatriation basis)
Govt. Securities	Govt. dated Securities/Treasury Bills, Units of Domestic Mutual Funds, Bonds issued by PSUs and shares of Public Sector Enterprises being divested	NRIs & FIIs
Indian VCU or VCF or in a Scheme floated by VCF	SEBI Registered VCF/VC Units	SEBI Registered Foreign Venture Capital Investor

Part II

1. Acquisition and Transfer of Immovable Property in India.

1.1 A person resident outside India who is a citizen of India (NRI) can acquire by way of purchase any immovable property in India other than agricultural land/plantation / farm house. He can transfer any immovable property other than agricultural or plantation property or farm house to:

- a) A person resident outside India who is a citizen of India or
- b) A person of Indian origin resident outside India or
- c) A person resident in India.

He may transfer, agricultural land/ plantation property / farm house only to Indian citizens permanently residing in India.

1.2. A person resident outside India who is a person of Indian Origin (PIO) can acquire any immovable property in India other than agricultural land / farm house / plantation property :-

- a) By way of purchase out of funds received by way of inward remittance through normal banking channels or by debit to his NRE / FCNR(B) / NRO account.
- b) By way of gift from a person resident in India or a NRI or a PIO.
- c) By way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations at the time of acquisition of the property.

1.3 A PIO may transfer any immovable property other than agricultural land/Plantation property/farmhouse in India

- a) By way of sale to a person resident in India.
- b) By way of gift to a person resident in India or a Non resident Indian or a PIO..

1.4 A PIO may transfer agricultural Land / Plantation property / farmhouse in India by way of sale or gift to person resident in India who is a citizen of India

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

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

3. Acquisition of Immovable Property for carrying on a permitted activity

A person resident outside India who has a branch, office or other place of business, (excluding a liaison office) in India for carrying on his business activity, with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such activity provided that all applicable laws, rules, regulations or directions in force are duly complied with. The entity / concerned person is required to file a declaration in the form IPI with the Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said immovable property to an authorised dealer bank as a security for any borrowing.

4. Repatriation of sale proceeds

In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI / PIO, the authorised dealer will allow repatriation of sale proceeds outside India provided;

- i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of FEMA Regulations;
- ii) the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or (b) the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property.
- iii) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- iv) In the case of sale of immovable property purchased out of Rupee funds, ADs may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their Non-resident Rupee (NRO) accounts upto US\$ 1 million per calendar year, provided that the property has been held for a period not less than 10 years or for a combined period of 10 years partly as property and as sale proceeds in NRO account and subject to production of undertaking by the remitter and a certificate from the Chartered Accountant in the formats prescribed by the CBDT.

5. Prior permission for acquisition or transfer of immovable property in India by citizens of certain countries

5.1 No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan shall acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of Reserve Bank.

5.2 Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India.

5.3 Foreign Nationals of non Indian origin who have acquired immovable property in India with the specific approval of the Reserve Bank cannot transfer such property without prior permission of the Reserve Bank.

Part III

Investment in Partnership Firm / Proprietary Concern

1. Investment in a firm or a proprietary concern in India by a person resident outside India

A non-resident Indian or a person of Indian origin resident outside India may invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided

- a) Amount is invested by inward remittance or out of NRE / FCNR / NRO account maintained with AD bank.
- b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.
- c) Amount invested shall not be eligible for repatriation outside India.

2. Investment in sole proprietorship concern / partnership firm with repatriation benefits

NRIs / PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/ partnership firms with repatriation benefits.

3. Investment by non-residents other than NRIs / PIO

A person resident outside India other than NRIs / PIO may make an application and seek prior approval of Reserve bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India.

4. Restrictions

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

Sectors/Activities prohibited/restricted under FDI Policy**(A) List of Activities for which Automatic Route of RBI for investment from person resident outside India is not available**

1. Petroleum Sector (except for private sector oil refining), *Natural Gas / LNG Pipelines*
2. Investing companies in Infrastructure & Services Sector
3. Defence and Strategic Industries
4. Atomic Minerals
5. Print Media
6. Broadcasting
7. Postal services
8. Courier Services
9. Establishment and Operation of satellite
10. Development of Integrated Township
11. Tea Sector
12. Asset Reconstruction Companies

(B) List of activities or items for which FDI is prohibited

1. Retail Trading
2. Atomic Energy
3. Lottery Business
4. Gambling and Betting
5. Housing and Real Estate business
6. Agriculture (**excluding** Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (**Other than Tea plantations**)

Sectoral Cap on Investments by Persons Resident Outside India

Sector	Investment Cap	Description of Activity/Items/Conditions
1. Private Sector Banking	74%	Subject to guidelines issued by RBI from time to time
2. Non-Banking Financial Companies	100%	<p>FDI / NRI investments allowed in the following 19 NBFC activities shall be as per the levels indicated below :</p> <p>a) Activities covered</p> <ol style="list-style-type: none"> 1. Merchant Banking 2. Under writing 3. Portfolio Management Services 4. Investment Advisory Services 5. Financial Consultancy 6. Stock-broking 7. Asset Management 8. Venture Capital 9. Custodial Services 10. Factoring 11. Credit Reference Agencies 12. Credit Rating Agencies 13. Leasing & Finance 14. Housing Finance 15. Forex-broking 16. Credit Card Business 17. Money-changing Business 18. Micro-credit 19. Rural credit <p>b) Minimum Capitalisation norms for fund based NBFCs</p> <ol style="list-style-type: none"> i) for FDI upto 51%, US \$ 0.5 million to be brought in upfront ii) If the FDI is above 51 % and upto 75 %, US \$ 5 million to be brought upfront iii) If the FDI is above 75 % and upto 100 %, US \$ 50 million out of which \$ 7.5 million to be brought in upfront and the balance in 24 months <p>c) Minimum Capitalisation norms for non-fund based activities</p> <p>Minimum Capitalisation norm of US\$0.5 million is applicable in respect of non-fund based NBFCs with foreign investment.</p> <p>d) Foreign investors can set up 100% operating</p>

subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital)

e) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capital inflow i.e., (b)(i) and (b)(ii) above.

f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would issue appropriate guidelines in this regard.

3. Insurance 26%

FDI upto 26% in the Insurance sector is allowed on the automatic route subject to obtaining license from Insurance Regulatory & Development Authority (IRDA)

4. Telecommunications 49%

i) In basic, Cellular, Value Added Services, and Global Mobile Personal Communications by Satellite, FDI is limited to 49% subject to licensing and security requirements and adherence by the companies (who are investing and the companies in which the investment is being made) to the license conditions for foreign equity cap and lock-in period for transfer and addition of equity and other license provisions.

ii) ISP with gateways, radio paging and end-to-end bandwidth, FDI is permitted upto 74% with FDI, beyond 49% requiring Government approval. These services would be subject to licensing and security requirements.

iii) No equity cap is applicable to manufacturing activities.

iv) FDI upto 100% is allowed for the following activities in the telecom sector:

a) ISPs not providing gateways (both for satellite and submarine cables)

b) Infrastructure Providers providing dark fibre (IP Category 1)

c) Electronic Mail, and

d) Voice Mail

The above would be subject to the following conditions:

a) FDI upto 100% is allowed subject to the condition that such companies would divest 26% of their equity in favour of Indian public in 5 years, if these

			companies are listed in other parts of the world.
			b) The above services would be subject to licensing and security requirements, wherever required
			c) Proposal for FDI beyond 49% shall be considered by FIPB on case-to-case basis.
5.	(i) Petroleum Refining (Private Sector)	100%	FDI permitted upto 100 % in case of private Indian companies.
	(ii) Petroleum Product Marketing	100%	Subject to the existing sectoral policy and regulatory framework in the oil-marketing sector.
	(iii) Oil Exploration in both small and medium sized fields	100%	Subject to and under the policy of Government on private participation in -
			a) exploration of oil and
			b) the discovered fields of national oil companies.
	(iv) Petroleum Product Pipelines	100%	Subject to and under the Government Policy and regulations thereof.
6.	Housing and Real Estate	100%	ONLY NRIs are allowed to invest in the areas listed below:
			a) Development of serviced plots and construction of built-up residential premises
			b) Investment in real estate covering construction of residential and commercial premises including business centres and offices
			c) Development of townships
			d) City and regional level urban infrastructure facilities, including both roads and bridges
			e) Investment in manufacture of building materials
			f) Investment in participatory ventures in (a) to (e) above
			g) Investment in housing finance institutions which is also opened to FDI as an NBFC.
7.	Coal and Lignite		i) Private Indian companies setting up or operating power projects as well as coal and lignite mines for captive consumption are allowed FDI upto 100%.
			ii) 100% FDI is allowed for setting up coal processing plants subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.
			iii) FDI upto 74% is allowed for exploration or mining of

coal or lignite for captive consumption.

- iv) In all the above cases, FDI is allowed upto 50% under the automatic route subject to the condition that such investment shall not exceed 49% of the equity of a PSU.

8. Venture Capital Fund (VCF) and Venture Capital Company (VCC)

Offshore Venture Capital Funds/companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI.

9. Trading

Trading is permitted under automatic route with FDI upto 51% provided it is primarily export activities, and the undertaking is an export house/ trading house / super trading house/ star trading house. However, under the FIPB route:

- i) 100% FDI is permitted in case of trading companies for the following activities:
 - a) exports;
 - b) bulk imports with export/ ex-bonded warehouse sales;
 - c) cash and carry wholesale trading;
 - d) other import of goods or services provided at least 75% is for procurement and sale of the same group and not for third party use or onward transfer/ distribution/sales.
- ii) The following kinds of trading are also permitted, subject to provisions of Exim Policy.
 - a) Companies for providing after sales services(that is not trading per se)
 - b) Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their Joint ventures in which they have equity participation in India
 - c) Trading of hi-tech items/items requiring specialised after sales service
 - d) Trading of items for social sector
 - e) Trading of hi-tech, medical and diagnostic items
 - f) Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specifications, a company can market that item under its

brand name

- g) Domestic sourcing of products for exports
- h) Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with test marketing.
- i) FDI upto 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in five years, if these companies are listed in other parts of the world. **Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.**

10.	Power	100%	FDI allowed upto 100 % in respect of projects relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of foreign direct investment.
11.	Drugs & Pharmaceuticals	100%	FDI permitted upto 100% for manufacture of drugs and pharmaceuticals provided the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell/tissue targeted formulations. FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA technology and specific cell/tissue targeted formulations will require prior Govt. approval.
12.	Road and highways, Ports and harbours	100%	In projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbours.
13.	Hotel & Tourism	100%	<p>The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/ or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and Convention/Seminar units and organisations.</p> <p>For foreign technology agreements, automatic approval is granted if</p> <ul style="list-style-type: none">i) Upto 3% of the capital cost of the project is proposed to be paid for technical and consultancy

		ii)	Upto 3% of the net turnover is payable for franchising and marketing/publicity support fee, and
			Upto 10% of gross operating profit is payable for management fee, including incentive fee.
14.	Mining	74%	i) For exploration and mining of diamonds and precious stones FDI is allowed upto 74 % under automatic route
		100%	ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing FDI is allowed upto 100 % under automatic route
			iii) Press Note 18 (1998 series) dated 14/12/98 would not be applicable for setting up 100 % owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral.
15.	Advertising	100%	Advertising sector - FDI upto 100% allowed on the automatic route
16.	Films	100%	Film Sector (Film production, exhibition and distribution including related services/products) FDI upto 100% allowed on the automatic route with no entry-level condition
17.	Airports	74%	Govt. approval required beyond 74%
18.	Mass Rapid Transport Systems	100%	FDI upto 100% is permitted on the automatic route in mass rapid transport system in all metros including associated real estate development
19.	Pollution Control & Management	100%	In both manufacture of pollution control equipment and consultancy for integration of pollution control systems is permitted on the automatic route
20.	Special Economic Zones	100%	All manufacturing activities except: i) Arms and ammunition , Explosives and allied items of defence equipments, Defence aircrafts and warships, ii) Atomic substances, Narcotics and Psychotropic Substances and hazardous Chemicals, iii) Distillation and brewing of Alcoholic drinks and iv) Cigarette/cigars and manufactured tobacco substitutes.

21.	Any other Sector/ Activity	100 %	if not included in Annexure A
22.	Air Transport Services (Domestic Airlines)	100% for NRIs 49% for others	No direct or indirect equity participation by foreign airlines is allowed
23.	Townships, housing, built-up infrastructure and construction - development projects The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure.	100%	<p>The investment shall be subject to the following guidelines:</p> <p>(a) Minimum area to be developed under each project shall be as under :</p> <p>(i) In case of development of serviced housing plots - 10 hectares.</p> <p>(ii) In case of construction -development project - 50,000 sq.mtrs.</p> <p>(iii) In case of combination project, any one of the above two conditions.</p> <p>(b) The investment shall be subject to the following conditions:</p> <p>(i) Minimum capitalization of US \$ 10 Million for wholly owned subsidiaries and US \$ 5 Million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.</p> <p>(ii) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.</p> <p>(c) At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor shall not be permitted to sell undeveloped plots.</p> <p>(d) The project shall conform to the norms and standards, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government / Municipal / Local Body concerned.</p> <p>(e) The investor shall be responsible for obtaining all necessary approvals, including those of the building / layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules / bye-laws / regulations of the State Government / Municipal / Local Body concerned.</p> <p>(f) The State Government / Municipal / Local Body concerned, which approves the building / development plans, shall monitor compliance of the above conditions by the developer.</p>

Note: For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body / service agency before he would be allowed to dispose of serviced housing plots.

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

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

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

2. Pricing Guidelines

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

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

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

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

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

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

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

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

(a) Where the shares of an Indian company are traded on stock exchange,

- i) The sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock exchange;
- ii) if the transfer is other than that referred to in clause (i), the price shall be arrived at by

taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 percent variation. Where, however, the shares are being sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the objective of passing management control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by upto a ceiling of 25 percent over the price arrived at as above,

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

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

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

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

or

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

or

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

Explanation:

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

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

shares issued and paid up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.

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

3. Responsibilities / Obligations of the parties

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

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

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

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

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

2. Documentation

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

2.1 For sale of shares by a person resident in India

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

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

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

4. Reporting requirements

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

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

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

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

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

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

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

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

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI for listed companies and unlisted companies, respectively.
- vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.⁷

⁷ AP (DIR Series) Circular No. 08 dated August 25, 2005

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

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

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

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

13.	A.P.DIR(Series) Circular No.46	November 12, 2002
14.	A.P.DIR(Series) Circular No.52	November 23, 2002
15.	A.P.DIR(Series) Circular No.56	November 26, 2002
16.	A.P.DIR(Series) Circular No.67	January 13, 2003
17.	A.P.DIR(Series) Circular No.68	January 13, 2003
18.	A.P.DIR(Series) Circular No.69	January 13, 2003
19.	A.P.DIR(Series) Circular No.75	February 3, 2003
20.	A.P.DIR(Series) Circular No.88	March 27, 2003
21.	A.P.DIR(Series) Circular No.101	May 5, 2003
22.	A.P.DIR(Series) Circular No.10	August 20, 2003
23.	A.P.DIR(Series) Circular No.13	September 1, 2003
24.	A.P.DIR(Series) Circular No.14	September 16, 2003
25.	A.P.DIR(Series) Circular No.19	September 23, 2003
26.	A.P.DIR(Series) Circular No.28	October 17, 2003
27.	A.P.DIR(Series) Circular No.35	November 14, 2003
28.	A.P.DIR(Series) Circular No.38	December 3, 2003
29.	A.P.DIR(Series) Circular No.39	December 3, 2003
30.	A.P.DIR(Series) Circular No.43	December 8, 2003
31.	A.P.DIR(Series) Circular No.44	December 8, 2003
32.	AP (DIR Series) Circular No.53	December 17, 2003
33.	A.P.DIR(Series) Circular No.54	December 20, 2003
34.	A.P.DIR(Series) Circular No.63	February 3, 2004
35.	A.P.DIR(Series) Circular No.67	February 6, 2004
36.	A.P.DIR(Series) Circular No.89	April 24, 2004
37.	A.P.DIR(Series) Circular No.11	September 13, 2004
38.	A.P.DIR(Series) Circular No.13	October 1, 2004
39.	A.P.DIR(Series) Circular No.15	October 1, 2004
40.	A.P.DIR(Series) Circular No.16	October 4, 2004
41.	A.P.DIR(Series) Circular No.39	April 25, 2005
42.	A.P.DIR(Series) Circular No.44	May 17, 2005
43.	AP (DIR Series) Circular No. 04	July 29, 2005
44.	A.P. (DIR Series) Circular No. 06	August 11, 2005
45.	A.P. (DIR Series) Circular No. 07	August 17, 2005
46.	A.P. (DIR Series) Circular No. 08	August 25, 2005
47.	A. P. (DIR Series) Circular No. 10	August 30, 2005
48.	A.P. (DIR Series) Circular No. 11	September 05, 2005
49.	A.P. (DIR Series) Circular No.16	November 11, 2005
50.	A.P.(DIR Series) Circular No. 24	January 25, 2006