

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000

Notification No. FEMA 20/2000-RB dated 3rd May 2000 - In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations to prohibit, restrict or regulate, transfer or issue security by a person resident outside India, namely:

Short title and commencement :-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2009.

(ii) Save as otherwise provided in these Regulations, the provisions of these Regulations shall be deemed have come into force with effect from the dates specified hereunder.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 202/2009-RB, DT. 10/11/2009](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (second Amendment) Regulations, 2008.

(ii) Save as otherwise provided in these Regulations, the provisions of these Regulations shall come into force from the date of their publication in the Official Gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 179/2008-RB, DT. 22/02/2008](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Amendment) Regulations, 2008.

(ii) These shall be deemed to have come into force from December 31, 2007.@

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 175/2007-RB, DT. 22/02/2008](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Third Amendment) Regulations, 2007.

(ii) These regulations shall come into force from the date of their publication in the Official Gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 170/2007-RB, DT. 13/11/2007](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Second Amendment) Regulations, 2007.

(ii) This would come into effect from the date of its publication in the official gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 167/2007-RB, DT. 23/10/2007](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2007.

(ii) They shall come into force from the date of their publication in the Official Gazette.]

(Above sub-paragraph (i) & (ii) has been amended vide [NTF. NO. FEMA 153/2007-RB, DT. 31/05/2007](#))

[OLD-

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2006.

(ii) They shall come into force with effect from 8th November 2005.*]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA](#)

[149/2006-RB, DT. 09/06/2006](#)

* Certified that no person will be adversely affected by the retrospective effect being given to these regulations.)

[OLD

(i) These regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2006

(ii) They shall come into force from the date of their publication in the official Gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 145/2005-RB, DT. 06/01/2006](#))

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2005.

(ii) They shall come into force from the date of its publication in the official Gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 138/2005-RB, DT. 22/07/2005](#))

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2005.

(ii) They shall come into force from the date of its publication in the official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 137/2005-RB, DT. 22/07/2005](#))

[OLD

i. These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2005.

ii. They shall come into force from the date of their publication in the official

gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 136/2005-RB, DT. 19/07/2005](#))

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005.

(ii) They shall come into force from the date of 4th day of October, 2004*.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 131/2005-RB, DT. 17/03/2005](#))

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2005.

(ii) They shall come into force from the date of their publication in the Official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 130/2005-RB, DT. 17/03/2005](#))

[OLD

(i) These regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2004.

(ii) These amendments come into effect from October 01, 2004*.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 125/2004-RB, DT. 27/11/2004](#))

[OLD

1. (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Fourth Amendment) Regulations, 2004.

(2) They shall come into force on the 30th day of August, 2004.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA](#)

[122/2004-RB, DT. 30/08/2004](#))

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2004.

(ii) They shall come into force with immediate effect.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 118/2004-RB](#), DT. 16/06/2004)

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India)(Amendment) Regulations, 2004.

(ii) They shall come into force from the date of their publication in the Official Gazette.]

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 111/2004-RB](#), DT. 06/03/2004)

[OLD

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (First Amendment) Regulations, 2004

(ii) They shall come into force from the date of their publication in the Official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 108/2004-RB](#), DT. 01/01/2004)

(i) These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2003.

(ii) They shall come into force from the date of their publication in the Official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 106/2003-RB](#), DT. 27/10/2003)

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2003.

(ii) They shall come into force from the date of their publication in the Official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 100/2003-RB](#), DT. 03/10/2003)

1. (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003.

(ii) They shall come into force from the date of their publication in the Official Gazette.

(Above sub-regulation (i) & (ii) has been amended vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

(1) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a person Resident outside India) (First Amendment) Regulation, 2003.

(2) They shall come into force on their publication in the Official Gazette.

(Above sub-regulation (1) & (2) has been amended vide [Ntf. No. FEMA 85/2003-RB](#), Dt. 17/01/2003)

(i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2003.

(ii) They shall come into force on their publication in the Official Gazette.

(In above sub regulation the figure "2003" at title & short title & "Amendment" has been substituted vide [CORRIGENDUM - G.S.R. No.555\(E\), DT. 31/08/2004](#))

(Above sub-regulation (i) & (ii) has been amended vide Ntf.No. [FEMA 76/2002-RB](#), Dt. [12/11/2002](#))

1.

(i) These Regulation may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002.

(ii) They shall come into force from the date of publication in the Gazette

(In above Notification the figure "2002" at short title has been substituted vide [CORRIGENDUM - G.S.R. No.551\(E\), DT. 31/08/2004](#))

[OLD-(ii) They shall come into force with immediate effect.]
(Above sub-regulations (i) & (ii) has been amended vide [Ntf. No. FEMA 46/2001-RB](#), dated 29/11/2001)

(1) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2001.

(2) They shall come into force with immediate effect.]

(Above sub-regulations (1) & (2) had been amended vide [Ntf. No. FEMA 45/2001-RB](#), dated 20/09/2001)

(Above sub-regulations (i) & (ii) had been amended vide [Ntf. No. FEMA 41/2001-RB](#), dated 2nd March, 2001)

(Above sub-regulations (i) & (ii) had been amended vide [Ntf. No. FEMA 35/2001-RB](#), dated 16th February, 2001)

2.

Definitions :-

In these Regulations, unless the context requires otherwise, -

i.

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

(ia) 'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

(Above sub-regulation (ia) has been inserted vide [NTF. NO. FEMA 149/2006-RB, DT. 09/06/2006](#))

ii. 'Capital' means equity shares, preference shares and convertible debentures

[OLD-

ii. 'Capital' means equity shares, preference shares, convertible preference shares, and convertible debentures;]

ii.a. 'entity incorporated outside India means an entity incorporated/registered under the relevant statutes, laws of the host country.

(Above clause ii.a. has been inserted vide [NTF. NO. FEMA 100/2003-RB](#), DT. 03/10/2003)

(iib) "preference shares" mean compulsorily and mandatorily convertible preference shares.

(iic) "debenture" means compulsorily and mandatorily convertible debenture

(In regulation 2, clause (ii) - substituted -wef 01/05/2007, clause (iib) &(iic) - inserted wef 01/05/2007 vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

iii.

'registered Foreign Institutional Investor (FII)' means the foreign institutional investor registered with SEBI;

iiia.

'Foreign Venture Capital Investor' means an investor incorporated and established outside India which proposes to make investment in Venture Capital Fund(s) or Venture Capital Undertaking(s) in India and is registered with SEBI under SEBI (Foreign Venture Capital Investors) Regulations, 2000;

(Above **clause iiia.** has been inserted vide [Ntf. No. FEMA 32/2000-RB](#), dated 26th December, 2000)

iv.

'Government approval' means approval from the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India or as the case may be, Foreign Investment Promotion Board (FIPB) of the Government of India,

v.

'Indian company' means a company incorporated in India;

va.

'Indian Venture Capital Undertaking' means a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI;"

(Above clause va. has been inserted vide [Ntf. No. FEMA 32/2000-RB](#), dated 26th December, 2000)

vi.

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

vii.

Joint Venture (JV) and Wholly Owned Subsidiary shall have the meanings respectively assigned to them in the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;

(vii a) NRI shall have the same meaning assigned to him under the Foreign Exchange Management (Deposit) Regulations, 2000.

(Above (vii a) has been substituted vide [NTF. NO. FEMA 122/2004-RB](#), DT. 30/08/2004)

[OLD-

(vii) (a) Non-resident Indian (NRI) shall have the meaning assigned to it in clause (iv) of Regulation 2 of the Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000.]

viii.

[DELETED- 'Non-resident Indian (NRI)'], 'Overseas Corporate Body (OCB)', shall have the meanings respectively assigned to them in the Foreign Exchange Management (Deposit) Regulations, 2000.

(Item (vii)(a) has been inserted & words "Non-resident Indian (NRI)" at item (viii) deleted vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

ix.

'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

x.

'Secretariat for Industrial Assistance" means Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion , Ministry of Commerce and Industry, Govt. of India;

xi.

'Transferable Development Rights (TDR)' shall have the same meaning as assigned to it in the Regulations made under sub-section (2) of section 6 of the Act;

xia.

'Venture Capital Fund' means a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in venture Capital Undertakings in accordance with the said Regulations;"

(Above clause xia. has been inserted vide [Ntf. No. FEMA 32/2000-RB](#), dated 26th December, 2000)

xii.

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

3.

Restriction on issue or transfer of Security by a person resident outside India :-

Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall issue or transfer any security:-

Provided that a security issued prior to, and held on, the date of commencement of these Regulations, shall be deemed to have been issued under these Regulations and shall accordingly be governed by these Regulations;

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to issue or transfer any security, subject to such conditions as may be considered necessary.

4.

Restriction on an Indian entity to issue security to a person resident outside India or to record a transfer of security from or to such a person in its books :-

Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person:-

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary.

5. Permission for purchase of shares by certain persons resident outside India :-

(1) (i) A person resident outside India (other than a citizen of Bangladesh or Pakistan [~~Deleted~~ - or Sri Lanka]) or an entity incorporated outside India, [~~OLD~~ - or an entity outside India, whether incorporated or not,] (other than an entity in Bangladesh or Pakistan) , may purchase shares or convertible debentures of an Indian

company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in **Schedule 1**.

(ii) Notwithstanding anything contained in sub-regulation (i) above, a person who is a citizen of Bangladesh or an entity incorporated in Bangladesh may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.

(In above sub-regulation (1) clause (i) renumbered & clause (ii) has been inserted vide [NTF. NO. FEMA 167/2007-RB, DT. 23/10/2007](#)

(In sub-regulation (1)/(1)(i) the words "or Sri Lanka" has been deleted vide [NTF. NO. FEMA 122/2004-RB, DT. 30/08/2004](#))

(Please refer [CIR. NO. 54/2003-04-RB, DT. 20/12/2003](#) - Investment by an unincorporated entity under Foreign Direct Investment (FDI) Scheme)

(In sub-regulation (1)/(1)(i), the words "or an entity incorporated outside India," has been substituted vide [NTF. NO. FEMA 100/2003-RB, DT. 03/10/2003](#))

(2) A registered Foreign Institutional Investor (FII) may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme, subject to the terms and conditions specified in **Schedule 2**.

[OMITTED -

"Provided that the FII shall not purchase shares or convertible debentures of an Indian company which is engaged in the print media sector".]

(Above proviso has been omitted vide [NTF. NO. FEMA 138/2005-RB, DT. 22/07/2005](#))

(In sub-regulation 2. above **clause** added vide [Ntf. No. FEMA 35/2001-RB](#), dated 16th February, 2001)

Provided further that Foreign Institutional Investors shall not invest in the paid up equity capital of Asset Reconstruction Companies.

(Above proviso has been inserted vide [NTF. NO. FEMA 149/2006-RB, DT. 09/06/2006](#))

(3)

(i) A Non-resident Indian (NRI) may purchase shares or convertible debentures of an Indian Company on a Stock Exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3 [OMITTED - , provided that the NRI shall not purchase shares or convertible debentures of an Indian Company which is engaged in Print Media sector.]

(In sub-regulation (3), clause (i), proviso and the coma has been omitted vide [NTF. NO. FEMA 138/2005-RB, DT. 22/07/2005](#))

(ii) A non-resident Indian or an Overseas Corporate Body may purchase shares or convertible debentures of an Indian company on non-repatriation basis other than under Portfolio Investment Scheme subject to the terms and conditions specified in Schedule 4 [OMITTED - , provided that the NRI or OCB shall not purchase shares or convertible debentures of an Indian Company which is engaged in Print Media sector.]

(In sub-regulation (3), clause (ii), proviso and the coma has been omitted vide [NTF. NO. FEMA 138/2005-RB, DT. 22/07/2005](#))

(Above sub-regulation (3) has been substituted vide [Ntf. No. FEMA 46/2001-RB](#), dated 29/11/2001)

[Old

(3) A non-resident Indian or an overseas corporate body may purchase shares or convertible debentures of an Indian company -

i) on a stock exchange under the Portfolio Investment Scheme, subject to the terms and conditions specified in **Schedule 3**; or/and

ii) on non-repatriation basis other than under Portfolio Investment Scheme, subject to the terms and conditions specified in **Schedule 4.**]

"Provided that the NRI/OCB shall not purchase shares or convertible

debentures of an Indian company which is engaged in the print media sector".

(In sub-regulation 3. above clause added vide [Ntf. No. FEMA 35/2001-RB](#), dated 16th February, 2001)

(4) A non-resident Indian or an overseas corporate body or a registered FII may purchase securities, other than shares or convertible debentures of an Indian company, subject to the terms and conditions specified in **Schedule 5**.

(5) A Foreign Venture Capital Investor registered with SEBI may make investment in a Venture Capital Fund or an Indian Venture Capital Undertaking, in the manner and subject to the terms and conditions specified in **Schedule 6**.

[OMITTED - "Provided that the Foreign Venture Capital Investor shall not purchase shares or convertible debentures of an Indian company which is engaged in the print media sector".]

(Above proviso has been omitted vide [NTF. NO. FEMA 138/2005-RB, DT. 22/07/2005](#))

(Above clause 5. has been inserted vide [Ntf. No. FEMA 32/2000-RB](#), dated 26th December, 2000)

(In sub-regulation 5. above clause added vide [Ntf. No. FEMA 35/2001-RB](#), dated 16th February, 2001)

(6) A registered Foreign Institutional Investor (FII) having valid approval under the Foreign Exchange Regulation Act, 1973 or under the Foreign Exchange Management Act, 1999 may trade in all exchange traded derivative contracts approved by RBI/SEBI subject to the limits and margin requirement prescribed by RBI/SEBI as well as the stipulations regarding collateral securities as directed by the Reserve Bank from time to time.

(Above sub-regulation (6) has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#) wef 31/12/2007)

[OLD-

(6) A registered Foreign Institutional Investor (FII) having valid approval under FERA, 1973 or under FEMA 1999 may trade in all exchange traded derivative contracts approved by SEBI from time to

time subject to the limits as prescribed in by SEBI.]

(7) A Non-Resident Indian (NRI) may invest in exchange traded derivative contracts approved by SEBI from time to time out of INR funds held in India on non-repatriable basis subject to the limits prescribed by SEBI. Such investments will not be eligible for repatriation benefits.

(Above Sub-Regulation (6) & (7) has been added vide [Ntf. No. FEMA 85/2003-RB](#), Dt. 17/01/2003)

6.

Acquisition of right shares :-

(1) A person resident outside India may purchase equity or preference shares or convertible debentures offered on right basis by an Indian company which satisfies the conditions specified in sub-regulation (2).

(2) An Indian company which satisfies the following conditions, may offer to a person resident outside India, equity or preference shares or convertible debentures on right basis, namely: -

i) The offer on right basis does not result in increase in the percentage of foreign equity already approved, or permissible under the Foreign Direct Investment Scheme in terms of these Regulations;

ii) The existing non-resident shareholders may apply for issue of additional shares, and the investee company may allot the same subject to the condition that the overall issue of shares to non-residents in the total paid-up capital does not exceed the sectoral cap.

iii) The existing shares or debentures against which shares or debentures are issued by the company on right basis were acquired and are held by the person resident outside India in accordance with these Regulations;

iv) The offer on right basis to the persons resident outside India is at a price which is not lower than that at which the offer is made to resident shareholders;

(Above sub-regulation (2)(ii) has been new added & previous (2)(ii), (iii) renumbered vide Ntf.No. [FEMA 76/2002-RB, Dt. 12/11/2002](#))

(3) The right shares or debentures purchased by the person resident outside India shall be subject to same conditions including restrictions in regard to repatriability as are applicable to the original shares against which right shares or debentures are issued: -

Provided that the amount of consideration for purchase of right shares or debentures is paid by way of inward remittance in foreign exchange through normal banking channels or by debit to NRE/FCNR account, when the shares or debentures are issued on repatriation basis: -

Provided further that in respect of the shares or debentures issued on non-repatriation basis, the amount of consideration may also be paid by debit to NRO/NRSR/NRNR account.

6A. Acquisition of Bonus shares :-

An Indian company may issue bonus shares to its non-resident shareholders, subject to the following conditions:

- a. the shares against which bonus shares are issued by the company (hereinafter referred to as 'the original shares') were acquired or held by the non-resident shareholder in accordance with the Rules/ Regulations applicable to such acquisition;
- b. the bonus shares acquired by the non-resident shareholder shall be subject to the same conditions including restrictions in regard to repatriability as are applicable to the original shares.

6B. A company issuing rights shares or bonus shares in terms of these Regulations shall report to the Reserve Bank in form FC-GPR as stipulated in Paragraph 9 (1)(B) of Schedule 1 to these Regulations.

(Above Regulation 6B has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

**[OLD-
6B. Report to RBI: -**

A company issuing right shares or bonus shares in terms of Regulation 6 or Regulation 6A as the case may be, shall, within thirty days from the date of issue, report the transaction in Form FC-GPR to the Regional Office of the Reserve Bank of India under whose jurisdiction the Registered Office of the company is situated.】

(Regulation 6A. & 6B. has been inserted vide [NTF. NO. FEMA 94/2003-RB, DT. 18/06/2003](#))

7. Issue and acquisition of shares after merger or de-merger or amalgamation of Indian companies :-

(1) Where a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of de-merger or otherwise of an Indian company, has been approved by a Court in India, the transferee company or, as the case may be, the new company may issue shares to the shareholders of the transferor company resident outside India , subject to the following conditions, namely:

a) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank, or specified in these Regulations: -

Provided that where the percentage is likely to exceed the percentage specified in the approval or the Regulations, the transferor company or the transferee or new company may, after obtaining an approval from the Central Government, apply to the Reserve Bank for its approval under these Regulations.

b) the transferor company or the transferee or new company shall not engage in agriculture, plantation or real estate business or trading in TDRs; and

c) the transferee or the new company files a report within 30 days with the Reserve Bank giving full details of the shares held by persons resident outside India in the transferor and the transferee or the new company, before and after the merger/amalgamation/reconstruction, and also furnishes a confirmation that all the terms and conditions stipulated in the scheme approved by the Court have been complied with.

8.

Issue of shares under Employees Stock Options Scheme to persons resident outside India :-

(1) An Indian company may issue shares under the Employees' Stock Options Scheme, by whatever name called, to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust: -

Provided that

a) the scheme has been drawn in terms of regulations issued under the Securities Exchange Board of India Act, 1992; and

b) face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid-up capital of the issuing company.

(2) The Trust and the issuing company shall ensure that value of shares held by persons resident outside India under the scheme does not exceed the limit specified in clause (b) of sub-regulation (1).

(3) The issuing company shall furnish to the Reserve Bank, within thirty days from the date of issue of shares under the scheme, a report giving the following particulars/documents, -

i) names of persons to whom shares are issued under the scheme and number of shares issued to each of them;

ii) a certificate from the Company Secretary of the issuing company that the value of shares issued under the scheme does not exceed 5% of the paid up capital of the issuing company and that the shares are issued in compliance with the regulations issued by the SEBI in this behalf.

9.

Transfer of shares and convertible debentures of an Indian company by a person resident outside India :-

1.

Subject to the provisions of sub-regulation (2), a person resident outside India holding the shares or debentures of an Indian company in accordance with these Regulations, may transfer the shares or debentures so held by him, in compliance with the conditions specified in the relevant Schedule of these regulations.

(2) (i) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale or gift, the shares or convertible debentures held by him or it to any person resident outside India;

(ii) A non-resident Indian or an overseas corporate body may transfer by way of sale or gift, the shares or convertible debentures held by him or it to another non-resident Indian or overseas corporate body only;

Provided that the person to whom the shares are being transferred, in terms of clause (i) and (ii), has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

Provided further that the restriction in clauses (i) and (ii) shall not apply to the transfer of shares to International financial institutions such as Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG) and transfer of shares of an Indian company engaged in Information Technology sector.

(iii) A person resident outside India holding the shares or convertible debentures of an Indian company in accordance with these Regulations,

a. may transfer the same to a person resident in India by way of gift;

b. may sell the same on a recognized Stock Exchange in India through a registered broker.

(Sub-regulation (2) has been substituted vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

[OLD-

(2) i) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale, the shares or convertible debentures held by him to any person resident outside India: -

Provided that the person to whom the shares are being transferred has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

ii) A non-resident Indian or an overseas corporate body may transfer by way of sale, the shares or convertible debentures held by him or it to another non-resident Indian or an overseas corporate body only.

iii) A person resident outside India may transfer any security held by him, to a person resident in India by way of gift.]

10. Prior permission of Reserve Bank in certain cases for transfer of security :-

A. Transfer by way of gift or sale by a person resident in India not being erstwhile OCBs

A person resident in India who proposes to transfer to a person resident outside India not being erstwhile OCBs: -

(In A. words "not being erstwhile OCBs" has been added vide [NTF. NO. FEMA 131/2005-RB, DT. 17/03/2005](#))

(a) (i) any security, by way of gift, shall make an application to the Reserve Bank for its approval.

(ii) The Reserve Bank may grant such approval on being satisfied of the following conditions:

a) The donee is eligible to hold such a security under Schedules 1, 4 and 5 of these Regulations.

- b) The gift does not exceed 5% of the paid up capital of the Indian company/each series of debentures/each mutual fund scheme.
- c) The applicable sectoral cap/ foreign direct investment limit in the Indian company is not breached.
- d) The donor and the donee are relatives as defined in section 6 of the Companies Act, 1956.
- e) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of USD 25,000.
- f) Such other conditions as considered necessary in public, interest by the Reserve Bank.

(iii) The application for approval referred to in sub clause (i) shall contain the following information/ documents:

- (a) Name and address of the donor and the donee.
- (b) Relationship between the donor and the donee.
- (c) Reasons for making the gift.
- (d) In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such securities.
- (e) 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.
- (f) In case of shares and debentures, a certificate from a Chartered Account on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI with regard to listed companies and unlisted companies respectively.
- (g) 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 debenture to be held by the non-resident transferee shall not exceed 5% of the paid up capital of the company.

(In Regulation 10, sub-regulation A, Clause (a) has been substituted vide [NTF. NO. FEMA 137/2005-RB, DT. 22/07/2005](#))

[OLD-

a) any security, by way of gift, shall make an application to the Reserve Bank furnishing the following information, namely:

i) Name and address of the transferor and the proposed transferee

ii) Relationship between the transferor and the proposed transferee

iii) Reasons for making the gift.]

(b) any share/convertible debenture of an Indian Company whose activities fall under Annexure B to Schedule 1, other than items nos. 1, 2, and 3 and subject to the Sectoral Limits specified therein, shall transfer such shares/debentures without prior approval of Government and RBI if the same is by way of sale subject to the following:

(i) that the Indian Company whose shares or convertible debentures are proposed to be transferred is not engaged in rendering any financial service;

(ii) that the transfer does not fall within the purview of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; and

(iii) that the concerned parties adhere to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by Reserve Bank, from time to time.

(c) any security by way of sale, shall make an application to the Reserve Bank for its approval if,

(i) the activity of the Indian company, whose securities are being transferred, falls outside the Automatic Route, and the approval of the FIPB has been obtained for the said transfer;

(ii) the activity of the Indian company whose securities are being transferred, falls under the **financial services sector**;

(iii) the transfer falls within the purview of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; and

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

(Above clauses (c) has been inserted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#) wef 10/02/2006)

Explanation:- For the purpose of this Regulation, "**financial services**" shall mean service rendered by banking and non-banking companies regulated by the Reserve Bank, insurance, companies regulated by Insurance Regulatory and Development Authority (IRDA) and other companies regulated by any other financial regulator as the case may be.

(Above clause (b) has been substituted vide [NTF. NO. FEMA 131/2005-RB, DT. 17/03/2005](#))

[OLD-

b) any share/convertible debenture of an Indian company, by way of sale, shall obtain the Government approval for the transfer and thereafter apply to the Reserve Bank for its approval, which may be granted subject to such conditions as are considered necessary by Reserve Bank, including the price at which such sale may be made.]

B. Transfer by way of sale not covered by Regulation 9 by a person resident outside India

[Deleted-

1. Transfer by way of sale not covered by Regulation 9 by a person resident outside India of the shares/convertible debentures held by him to a person resident in India, shall require prior permission of the Reserve Bank, for which

application in **form TS 1** may be made to the Reserve Bank.]

2. A person resident outside India, may transfer share or convertible debenture of an Indian Company, without the prior permission of the Reserve Bank, by way of sale, to a person resident in India subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by Reserve Bank from time to time.

(Above clause 1. has been deleted and clause 2. substituted vide [NTF. NO. FEMA 131/2005-RB, DT. 17/03/2005](#))

[OLD-

2. While considering the grant of permission, the Reserve Bank shall take into account the following factors, namely:

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 Reserve Bank will satisfy itself that the shares are proposed to be sold at a price 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

(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:

i) A share is considered as thinly traded if the annualised 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.

11. Remittance of sale Proceeds :-

1. No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these Regulations and the conditions specified in the relevant Schedule.

2. An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India: -

Provided -

a) the security was held by the seller on repatriation basis;

b) either the security has been sold on a recognised stock exchange in India through a stock broker at the ruling market price as determined on the floor of the exchange, or the Reserve Bank's approval has been obtained in other cases for sale of the

security and remittance of the sale proceeds thereof; and

c) a no objection/tax clearance certificate from the Income Tax authority has been produced.

12. Pledge of shares of company Incorporated in India

(i) Any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing (ECB) raised by the borrowing company,

Provided that no person shall pledge any such share unless no-objection has been obtained from a bank which is an authorised dealer.

(ii) A bank which is an authorized dealer may grant 'no objection' for pledge of shares under clause (i) after satisfying itself of the following :

(a) the underlying ECB is strictly in compliance with the extant ECB guidelines,

(b) the loan agreement has been signed by both the lender and the borrower,

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

(d) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank : (Amendment) Rules, 2009.

Provided that the 'no objection' may be granted by a bank which is an authorised dealer subject to the following conditions, namely, -

a. the period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;

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

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

(Above Regulation (12) has been inserted vide [NTF. NO. FEMA 202/2009-RB, DT. 10/11/2009](#) - wef 11/07/2008)

SCHEDULE I

[See Regulation (5) (1)]

Foreign Direct Investment Scheme

1. Purchase by a person resident outside India of equity/preference/convertible preference shares and convertible debentures issued by an Indian company

1. A person resident outside India referred to in clauses (i) and (ii) of sub-regulation (1) of Regulation 5, may purchase shares or convertible debentures issued by an Indian company up to the extent and subject to the terms and conditions set out in this Schedule.

(Above 1. has been substituted vide [NTF. NO. FEMA 167/2007-RB, DT. 23/10/2007](#)

[OLD- 1. A person resident outside India referred to in sub-regulation (1) of Regulation 5, may purchase shares or convertible debentures issued by an Indian company up to the extent and subject to the terms and conditions set out in this schedule.]

2. If the person purchasing the shares under this Scheme proposes to be a collaborator or proposes to acquire the entire share holding of a new Indian company, he should obtain prior permission of Central Government if he has, as on January 12, 2005, an existing joint venture or technology transfer/trademark agreement in the same field as that of such Indian company.

Provided that no prior permission of Central Government shall be required for investments to be made by **Venture Capital Funds registered with SEBI**; investments by multinational financial institutions; or where in the existing joint-venture investment by either of the parties is less than **3%**; or where the existing joint

venture/ collaboration is defunct or sick or for transfer of shares of an Indian company engaged in **Information Technology** sector or in the mining sector, if the existing joint venture or technology transfer/trade mark agreement of the person to whom the shares are to be transferred are also in the Information Technology sector or in the mining sector for same area/mineral.

(Above sub-paragraph (2) has been substituted & proviso inserted - wef 12/01/20051 vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

[OLD-

2. If the person purchasing the shares under this Scheme proposes to be collaborator or proposes to acquire the entire share holding of a new Indian company, he should obtain a prior permission of Central Government if he has a previous venture or tie-up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company issuing the shares is engaged.]

2.

Automatic Route of Reserve Bank for Issue of shares by an Indian company

(1) An Indian company, not engaged in any activity/sector mentioned in Annex A to this schedule, may issue shares or convertible debentures to a person resident outside India, subject to the limits prescribed in Annex B to this schedule, in accordance with the Entry Routes specified therein and the provisions of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.

Provided that the shares or convertible debentures are not being issued by the Indian company with a view to acquire existing shares of any Indian company.

Explanation: A company which proposes to embark on expansion programme to undertake activities or manufacture items included in this Regulation is given retrospective effect from 12th day of January, 2005, that is, from the date on which Press Note No. 1 (2005 Series) was issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

Annex B to this Schedule may issue shares or debentures out of fresh capital proposed to be issued by it for the purpose of financing

expansion programme, up to the extent indicated in Annex B, subject to compliance with the provisions of this paragraph.

(Above sub-paragraph(1) has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#) wef 10/02/2006)

[OLD-

(1) An Indian company which is not engaged in any activity, or in manufacturing of item included in **Annexure 'A'** to this Schedule, may issue shares or convertible debentures to a person resident outside India, referred to in paragraph 1 upto the extent specified in **Annexure B**, subject to compliance with the provisions of the Industrial Policy and Procedures as notified by Secretariat for Industrial Assistance (SIA) in the Ministry of Commerce and Industry, Govt. of India, from time to time.

Provided that:

- i. the activity of the issuer company does not require an industrial licence under the provisions of the Industries (Development & Regulation) Act, 1951 or under the locational policy notified by Government of India under the Industrial Policy of 1991 as amended from time to time.
- ii. the shares or convertible debentures are not being issued by the Indian company with a view to acquiring existing shares of any Indian company.

Explanation:

A company which proposes to embark on expansion programme to undertake activities or manufacture items included in **Annexure B** to this schedule may issue shares or debentures out of fresh capital proposed to be issued by it for the purpose of financing expansion programme , upto the extent indicated in **Annexure B**, subject to compliance with the provisions of this paragraph.]

[OMITTED - (2) A trading company incorporated in India may issue shares or convertible debentures to the extent of 51 per cent of its capital, to persons resident outside India referred to paragraph 1, subject to the condition that remittance of dividend to the shareholders outside India is made only after the company has secured registration as an Export/Trading/Star Trading /Super Trading House from the Directorate General of Foreign Trade, Ministry of

Commerce, Government of India, New Delhi.

(2) A company which is a small scale industrial unit and which is not engaged in any activity or in manufacture of items included in **Annexure A**, may issue shares or convertible debentures to a person referred to in paragraph 1, to the extent of 24% of its paid-up capital;

Provided that such a company may issue shares in excess of 24% 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 **Annexure B**.

(3) Notwithstanding anything contained in clause (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 referred to in paragraph 1 in excess of 24 per cent provided it complies with the ceilings specified in **Annexure B**.

(4) An Indian company, otherwise eligible to issue shares under this Schedule may issue equity/preference shares, subject to pricing guidelines as given in paragraph 5 of this Schedule, to a person resident outside India,

(i) being a provider of technology/technical know-how, against Royalty/Lumpsum fees due for payment;

(ii) against External Commercial Borrowing (ECB) (other than import dues deemed as ECB or Trade Credit as per RBI Guidelines) :

Provided, that the foreign equity in the company after the conversion of Royalty/Lumpsum fee/ECB into equity is within the sectoral cap notified, if any.

(Above sub-paragraph (2) - omitted and (2), (3) and (4) renumbered vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

(Above Sub-paragraph (5) has been added vide [NTF. NO. FEMA 125/2004-RB, DT. 27/11/2004](#))

3. Issue of shares by a company requiring the Government approval

An Indian company intending to issue shares to a person resident outside India in accordance with these Regulations shall obtain prior approval of the Foreign Investment Promotion Board of Government of India if the company;

(a) is engaged or proposes to engage, in any activity given in Annex A (A) to this schedule; or

(b) falls under the FIPB route as stipulated under the column "Entry Route" in Annex B to this schedule; or

(c) proposes to issue shares to a person resident outside India against considerations other than inward remittance i.e. against royalty/lumpsum feedue for payment; or

(d) proposes to issue shares to a person resident outside India, on or after 28th day of November 2003, against External Commercial Borrowings(ECBs){excluding those deemed as ECBs} received in convertible foreign currency.

(Above paragraph 3 has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

[OLD-

3. Issue of shares by a company requiring the Government approval

A company which is engaged or proposes to engage in any activity specified in **Annexure 'A'** or which proposes to issue shares to a person resident outside India beyond the sectoral limits stipulated in Annexure 'B' either directly or by conversion of ECB/Royalty/Lumpsum fee or which is otherwise not eligible to issue shares to a person resident outside India, may issue shares to a person resident outside India referred to in paragraph 1, provided it has secured prior approval of Secretariat for Industrial Assistance or, as the case may be of the

Foreign Investment Promotion Board of the Government of India and the terms and conditions of such an approval are complied with.

(In Paragraph 3, the words "either directly or by conversion of ECB/Royalty/Lumpsum fee" has been added vide [NTF. NO. FEMA 125/2004-RB, DT. 27/11/2004](#))

4. Issue of Shares by International offering through ADR and/or GDR

1. An Indian company may issue its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs),

Provided the Indian company issuing such shares

a) has 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

b) is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations, and

c) 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.

2. The Indian company issuing shares under sub-paragraph (1), shall furnish to the Reserve Bank, full details of such issue in the Form DR[**OLD-** form specified in **Annexure 'C'**,] within 30 days from the date of closing of the issue.

3. The Indian company issuing shares against ADRs/GDRs shall furnish a quarterly return in the Form DR-Quarterly [**OLD-** form specified in **Annexure 'D'**] to Reserve Bank within fifteen days of the close of the calendar quarter.

4. Pending repatriation or utilisation of foreign exchange

resources raised in terms of clause (1) the Indian company may invest the foreign currency funds in -

(In above sub-paragraphs 3 & 4 the words "Form DR" & "Form DR-Quarterly" has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

(a) deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch, IBCA or Moody's etc.; and such rating not being less than the rating stipulated by Reserve Bank from time to time for the purpose.

(Clause a) has been replace vide [NTF. NO. FEMA 118/2004-RB, DT. 16/06/2004](#))

[OLD-

a) deposits with or Certificate of Deposits or other instruments of banks who have been rated not less than A1+ by Standard and Poor or P1 by Moody's for short term obligations,]

b) deposits with branch outside India of an authorised dealer in India, and

c) treasury bills and other monetary instruments with a maturity or un-expired maturity of the instrument of one year or less.

4A. A registered broker in India may purchase shares of an Indian Company on behalf of a person resident outside India, for the purpose of converting the shares so purchased into ADRs/GDRs,

Provided that

- i) the shares are purchased on a recognized stock exchange;
- ii) the Indian company has issued ADRs/GDRs;
- iii) the shares are purchased with the permission of Custodian of the ADRs/GDRs of the concerned Indian company and are deposited with the Custodian;

iv) the number of shares so purchased shall not exceed ADRs/GDRs converted into underlying shares and shall be subject to sectoral caps as applicable;

v) the non-resident investor, broker, Custodian and the overseas depository comply with the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued thereunder by the Central Government from time to time.

4B. An Indian company may sponsor an issue of ADRs/GDRs with an overseas depository against shares held by its shareholders at a price to be determined under the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and the reporting requirements as directed by Reserve Bank, from time to time.

(Above paragraph 4B has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

[OLD-

(4B) i) An Indian company may sponsor an issue of ADRs/GDRs with an overseas depository against shares held by its shareholders at a price to be determined by the Lead Manager.

ii) The proceeds of the issue shall be repatriated to India within a period of one month.

iii) The sponsoring company shall comply with the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued thereunder by the Central Government from time to time;

iv) the sponsoring company shall furnish full details of such issue in a form specified in Annexure C to the Foreign Investment Division, Exchange Control Department, Reserve Bank of India, Central Office, Mumbai within 30 days from the date of closure of the issue.]

(Above para **4A. & 4B** has been added vide [Ntf. No. FEMA](#)

[41/2001-RB](#), dated 2nd March, 2001)

**5.
Issue price**

Price of shares issued to persons resident outside India under this Schedule, shall not be less than

a) the price worked out in accordance with the SEBI guidelines as applicable, where the issuing company is listed on any recognised stock exchange in India, and

(In above paragraph 5, clause (a) words "as applicable" has been inserted vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

b) fair valuation of shares done by a chartered accountant as per the guidelines issued by the erstwhile Controller of Capital Issues, in all other cases.

**[OMITTED-
5A. Issue price of ADRs/GDRs**

Price of ADRs/GDRs to be issued to a person resident outside India may be decided by the Indian company-

a. where the issue is on public offer basis, in consultation with the Lead Manager to the issue; and

b. in other cases , as provided in paragraph 5 above.]

(Above paragraph 5A has been OMITTED vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

(Above paragraph 5A has been inserted vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

6. Issue price of ADRs/ GDRs

The pricing of ADRs/GDRs to be issued to a person resident outside India shall be determined under the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India from time to time.

(Above paragraph 6 has been substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

[OLD-

6.

Dividend Balancing

Where a company is engaged in any of the industries in the consumer goods sector, specified in Annexure E, or in any other activity where the condition of dividend balancing has been stipulated in terms of the provisions of Industrial Policy and Procedures notified by Secretariat for Industrial Assistance, the cumulative outflow of foreign exchange on account of payment of dividend over a period of seven years from the date of commencement of commercial production to investors outside India shall not exceed cumulative amount of export earning of the company during those years.

Provided that

a) the restriction under this paragraph shall not apply

i) in respect of shares held in such a company by International Finance Corporation (IFC), the Deutsche Entwicklungs Gescelschaft (DEG), the Commonwealth Development Corporation (CDC) and Asian Development Bank (ADB).

ii) to a company that has completed a period of seven years from the date of commencement of commercial production,

to obligations arising out of dividends declared/remitted after 14th July 2000 i.e. the date on which conditions of dividend balancing was withdrawn]

(Above para has been added vide [NTF. NO. FEMA 94/2003-RB, DT. 18/06/2003](#))

[Deleted-

b) in case of an existing company that has issued fresh equity to persons resident outside India under these Regulations, the restriction shall apply to the fresh shares from the date of their issue.]

(Above sub-clause (b) has been deleted vide [NTF. NO. FEMA 94/2003-RB](#), DT. 18/06/2003)

7.
Rate of Dividend on Preference Shares

The rate of dividend on preference shares or convertible preference shares issued under these Regulations shall not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the company in which issue of such shares is recommended.

8.
Mode of payment for shares issued to persons resident outside India

A company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares -

- i) by inward remittance through normal banking channels, or
- ii) by debit to NRE/FCNR account of the person concerned maintained with an authorised dealer/authorised bank.

Explanation: Conversion of Royalty/Lumpsum fee due for payment or conversion of ECB, as given elsewhere in this Schedule, shall be treated as consideration for issue of shares within the meaning of this paragraph.

(Above Explanation has been added vide [NTF. NO. FEMA 125/2004-RB](#), DT. 27/11/2004)

Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B) account, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by credit to his NRE / FCNR(B) account, as the case may be;

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt.

(Above provisos has been inserted vide [NTF. NO. FEMA 170/2007-RB, DT. 13/11/2007](#)

9. Report by the Indian company

(1) An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank,

A. not later than 30 days from the date of receipt of the amount of consideration, a report in form specified in Annex C to this schedule [**OLD- report**] indicating:

- i) Name and address of the foreign investors
- ii) Date of receipt of funds and their rupee equivalent
- iii) Name and address of the authorised dealer through whom the funds have been received, and
- iv) Details of the Government approval, if any.

B. not later than 30 days from the date of issue of shares, a report in **form FC-GPR** together with,

- i) a certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that
 - a) all the requirements of the Companies Act, 1956 have been complied with;
 - b) terms and conditions of the Government approval, if any, have been complied with;
 - c) the company is eligible to issue shares under these Regulations; and
 - d) the company has all original certificates issued by

authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 [~~OLD-~~ in accordance with paragraph 9];

ii) a certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

C) the amount of consideration received by Indian company as advance against equity shall be reported to the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the Company operates in the form specified in "Annex C " within 30 days of receipt thereof.

(In paragraph 9, sub-paragraph (1), in clause (A) the word "report in form specified in Annex C to this schedule", in clause (B)(d) the words and figure "in accordance with paragraph 8" - substituted and clause (C) - inserted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

Provided that, in addition to above, the company shall report the conversion of ECB into equity, in ECB 2 Return of the respective month in case of full conversion of ECB. In case of partial conversion of ECB, the converted portion shall be reported in Form FC-GPR to the concerned Regional Office of the Reserve Bank and non-converted portion in Form ECB -2.

(Above proviso has been added vide [NTF. NO. FEMA 125/2004-RB, DT. 27/11/2004](#))

10.

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

Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, permit an Indian company issuing shares to persons resident outside India under this Schedule, to retain the subscription amount in a foreign currency account, subject to such terms and conditions as it may stipulate.

Annex A

(See paragraph 2)

(A) List of Activities for which Automatic Route of RBI for investment by person resident outside India is not available

[Deleted - 1. Domestic Airlines]

1. Petroleum Sector (except for private sector oil refining)
2. Investing companies in Infrastructure & Services Sector **Natural Gas/LNG Pipelines**
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

(Item No. 1 has been deleted & 2 to 12 renumbered as 1 to 11 and Bold words "Natural Gas/LNG Pipelines" added at item No. 2, vide [NTF. NO. FEMA 130/2005-RB, DT. 17/03/2005](#))

12. Asset Reconstruction Companies

(Above item 12. has been inserted vide [NTF. NO. FEMA 149/2006-RB, DT. 09/06/2006](#))

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

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

Annex B

(See paragraph 2)

Sectoral cap on Investments by persons resident outside India

	Sector	Investment Cap	Description of Activity / Items / Conditions
1.	Private Sector Banking *	49%	Subject to guidelines issued by RBI from time to time
2.	Non-Banking Financial Companies	100%	FDI/NRI investments allowed in the following 19 NBFC activities shall be as per the levels indicated below : a) Activities covered : 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

		<p>14. Housing Finance 15. Forex-broking 16. Credit Card Business 17. Money-changing Business 18. Micro-credit 19. Rural credit</p> <p>b) Minimum Capitalisation norms for fund based NBFCs</p> <p>i) for FDI upto 51%, US \$ 0.5 million to be brought in upfront</p> <p>ii) If the FDI is above 51 % and upto 75 %, US \$ 5 million to be brought upfront</p> <p>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> <p>c) Minimum Capitalisation norms for non-fund based activities. Minimum Capitalisation norm of US\$0.5 million is applicable in respect of non-fund based NBFCs with foreign investment.</p> <p>d) Foreign investors</p>
--	--	---

			<p>can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital)</p> <p>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.</p> <p>f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would</p>
--	--	--	--

			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 licence from Insurance Regulatory & Development Authority(IRDA)
4.	Telecommunications	49 %	<p>i) In basic, Cellular, Value Added Services, and Global Mobile Personal Communications by Satellite, FDI is limited to 49% subject to licencing 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.</p> <p>ii) ISPs with gateways, radio paging and end-to-end bandwidth, FDI is permitted upto74% with FDI, beyond 49%</p>

			<p>requiring Government approval. These services would be subject to licensing and security requirements</p> <p>iii) No equity cap is applicable to manufacturing activities.</p> <p>iv) FDI upto 100% is allowed for the following activities in the telecom sector:</p> <ul style="list-style-type: none">a. ISPs not providing gateways (both for satellite and submarine cables)b. Infrastructure Providers providing dark fibre (IP Category 1)c. Electronic Mail, andd. Voice Mail <p>The above would be subject to the following conditions;</p> <ul style="list-style-type: none">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
--	--	--	--

			<p>these companies are listed in other parts of the world.</p> <p>b. The above services would be subject to licencing and security requirements, wherever required.</p> <p>c. Proposal for FDI beyond 49% shall be considered by FIPB on case to case basis.</p>
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%	<p>Subject to and under the policy of Government on private participation in:</p> <p>(a) exploration of oil and</p> <p>(b) the discovered fields of national oil companies</p>
	(iv) Petroleum Product Pipelines	100%	Subject to and under the Government Policy and regulations thereof.

(In Item No. 5, sub-item (ii) to (iv) has been inserted vide [NTF. NO. FEMA 130/2005-RB, DT. 17/03/2005](#))

6.	Housing and Real Estate	100 %	<p>Only NRIs are allowed to invest upto 100 % in the areas listed below :</p> <ul style="list-style-type: none">a) Development of serviced plots and construction of built-up residential premisesb) Investment in real estate covering construction of residential and commercial premises including business centres and officesc) Development of townshipsd) City and regional level urban infrastructure facilities, including both roads and bridgese) Investment in manufacture of building materialsf) Investment in participatory ventures in (a) to (e) aboveg) Investment in Housing finance
----	-------------------------	-------	--

			institutions which is also opened to FDI as an NBFC
7.	Coal & Lignite		<p>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%.</p> <p>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.</p> <p>iii) FDI upto 74% is allowed for exploration or mining of coal or lignite for captive consumption.</p> <p>iv) In all the above</p>

			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		<p>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:</p> <p>(i) 100% FDI is permitted in case of trading companies for the following activities:</p> <p>a) exports;</p> <p>b) bulk imports with export/ ex-bonded</p>

			<p>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.</p> <p>ii) The following kinds of trading are also permitted , subject to provisions of Exim Policy.</p> <p>a) Companies for providing after sales services(that is not trading per se)</p> <p>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</p> <p>c) Trading of hi-tech items/ items requiring specialised after sales service</p> <p>d) Trading of items for social sector</p>
--	--	--	--

			<p>e) Trading of hi-tech, medical and diagnostic items.</p> <p>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</p> <p>g) Domestic sourcing of products for exports</p> <p>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.</p> <p>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</p>
--	--	--	--

			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 %	<p>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.</p> <p>FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA</p>

			technology and specific cell/tissue targeted formulations will require prior Govt. approval.
12.	Road and highways, Ports and harbours	100%	In projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbours.
13.	Hotel & Tourism	100 %	The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/ or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and Convention/Seminar

			<p>units and organisations.</p> <p>For foreign technology agreements, automatic approval is granted if</p> <p>(i) Upto 3% of the capital cost of the project is proposed to be paid for technical and consultancy services including fees for architects, design, supervision, etc.</p> <p>(ii) Upto 3% of the net turnover is payable for franchising and marketing/publicity support fee, and</p> <p>Upto 10% of gross operating profit is payable for management fee, including incentive fee.</p>
14.	Mining	<p>74 %</p> <p>100 %</p>	<p>(i) For exploration and mining of diamonds and precious stones FDI is allowed upto 74 % under automatic route</p> <p>(ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones,</p>

			<p>metallurgy and processing FDI is allowed upto 100 % under automatic route</p> <p>(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.</p>
15.	Advertising	100 %	<p>Advertising Sector</p> <p>FDI upto 100 % allowed on the automatic route</p>
16.	Films	100 %	<p>Film Sector</p> <p>(Film production, exhibition and distribution including related services/products)</p> <p>FDI upto 100 % allowed on the automatic route with no entry-level condition</p>
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	100%	(If not included in

	Sector/Activity		Annexure A)
(Item 21 has been inserted vide NTF. NO. FEMA 111/2004-RB , DT. 06/03/2004)			
22	Air Transport Services (Domestic Airlines)	100% for NRIs 49% for others	No direct or indirect equity participation by foreign airlines is allowed.
(Item No. 22 has been inserted vide NTF. NO. FEMA 130/2005-RB , DT. 17/03/2005)			
23.	<p>Townships, housing, built-up infrastructure and construction – development projects.</p> <p>The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure.</p>	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.</p> <p>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</p>
--	--	--	---

		<p>Body concerned, which approves the building / development plans, shall monitor compliance of the above conditions by the developer.</p> <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.</p>
<p>(Item No. 23 has been inserted vide NTF. NO. FEMA 136/2005-RB, DT. 19/07/2005)</p>		

(Above word "Annex A", "Annex B" substituted vide [NTF. NO. FEMA 179/2008-RB, DT. 22/08/2008](#))

[NEXT](#)

Presented by eximkey.com