

## India

### FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) RULES, 2019 (2019)

*Official translation*

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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## CHAPTER I PRELIMINARY

### 1. Short title and commencement

(1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force from the date of their publication in the Official Gazette.

### 2. Definitions: In these rules, unless the context otherwise requires

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999); (b) "asset reconstruction company" means a company registered with the Reserve Bank under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); (c) "authorised bank" shall have the meaning assigned to it in the Foreign Exchange Management (Deposit) Regulations, 2016; (d) "authorised dealer" includes a person authorised under sub-section (1) of section 10 of the Act; (e) 'convertible note' means an instrument issued by a startup company acknowledging receipt of money initially as debt, repayable at the option of the holder, or which is convertible into such number of equity shares of that company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per other terms and conditions agreed and indicated in the instrument; (f) "debt instruments" means all instruments other than non-debt instruments defined in clause (ai) of this rule; (g) "depository receipt" means a foreign currency denominated instrument, whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of eligible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes 'global depository receipt' as defined in the Companies Act, 2013 (18 of 2013); (h) "domestic custodian" means a custodian of securities registered with the Securities and Exchange Board of India in accordance with the SEBI (Custodian of Securities) Regulations, 1996; (i) "domestic depository" means a custodian of securities registered with the Securities and Exchange Board of India and authorised by the issuing entity to issue Indian depository receipts; (j) "ESOP" means 'Employees' stock option' as defined under the Companies Act, 2013 and issued under the regulations by the Securities and Exchange Board of India; (k) "equity instruments" means equity shares, convertible debentures, preference shares and share warrants issued by an Indian company;

Explanation:- (i) Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid. "Convertible debentures" means fully, compulsorily and mandatorily convertible debentures. "Preference shares" means fully, compulsorily and mandatorily convertible preference shares. Share Warrants are those issued by an Indian company in accordance with the regulations by the Securities and Exchange Board of India. Equity instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price. (ii) Partly paid shares that have been issued to a person resident outside India shall be fully called-up

within twelve months of such issue or as may be specified by the Reserve Bank from time to time. Twenty-five per cent of the total consideration amount (including share premium, if any) shall be received upfront. (iii) In case of share warrants, at least twenty-five per cent of the consideration shall be received upfront and the balance amount within eighteen months of the issuance of share warrants. (l) "escrow account" means an escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016; (m) "FDI linked performance conditions" means the sector specific conditions specified in Schedule I of these rules for companies receiving foreign investment; (n) "FVCI" means a Foreign Venture Capital Investor incorporated and established outside India and registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000; (o) "foreign central bank" means an institution or organisation or body corporate established in a country outside India and entrusted with the responsibility of carrying out central bank functions under the law for the time being in force in that country; (p) "FCNR (B) account" means a Foreign Currency Non-Resident (Bank) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016; (q) "FCCB" or "Foreign Currency Convertible Bond" means a bond issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993; (r) "FDI" or "Foreign Direct Investment" means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company; Note:- In case an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below ten percent, of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI;

Explanation: - Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised; (s) "foreign investment" means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP; Explanation: - If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment; Note:- A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company; (t) "foreign portfolio investment" means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis 56 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] of a listed Indian company or less than ten percent of the paid-up value of each series of equity instrument of a listed Indian company; (u) "FPI" or "Foreign Portfolio Investor" means a person registered in accordance with the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014; (v) "government approval" means the approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be; (w) "group company" means two or more enterprises which, directly or indirectly, are in a position to (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) appoint more than fifty per cent of members of Board of Directors in the other enterprise; (x) "hybrid securities" means hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India; (y) "Indian company" means a company incorporated in India; (z) "IDR" or "Indian Depository Receipts (IDRs)" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts; (aa) "Indian entity" shall mean an Indian company or a LLP ; (ab) "investing company" means an Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings or securities; (ac) "investment" means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India;

Explanation:- (i) Investment shall include to acquire, hold or transfer depository receipts issued outside India, the underlying of which is a security issued by a person resident in India; (ii) for the purpose of LLP, investment shall mean capital contribution or acquisition or transfer of profit shares; (ad) "investment on repatriation basis" means an investment, sale or maturity 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; (ae) "investment vehicle" means an entity registered and regulated under the regulations framed by the Securities and Exchange Board of India or any other authority designated for that purpose and shall include, namely:- (i) Real Estate Investment Trusts (REITs) governed by the Securities and Exchange Board of India (REITs) Regulations, 2014;(ii) Infrastructure Investment Trusts (InvIts) governed by the Securities and Exchange Board of India (InvIts) Regulations.

2014 (iii) Alternative Investment Funds (AIFs) governed by the Securities and Exchange Board of India (AIFs) Regulations, 2012 ;and (iv) mutual funds which invest more than fifty percent in equity governed by the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996; (af) “LLP” means a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (6 of 2009); (ag) “listed Indian company” means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and the expression “unlisted Indian company” shall be construed accordingly; (ah) “manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing, :- (i) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (ii) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure; (ai) “non-debt instruments” means the following instruments; namely :- (i) all investments in equity instruments in incorporated entities: public, private, listed and unlisted; (ii) capital participation in LLP; (iii) all instruments of investment recognised in the FDI policy notified from time to time; (iv) investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvIts); (v) investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity; (vi) junior-most layer (i.e. equity tranche) of securitisation structure; (vii) acquisition, sale or dealing directly in immovable property; (viii) contribution to trusts; and (ix) depository receipts issued against equity instruments; (aj) “NRI” or “Non-Resident Indian” means an individual resident outside India who is a citizen of India; (ak) “OCI” or “Overseas Citizen of India” means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955 ( 57 of 1955); (al) “resident Indian citizen” means an individual who is a person resident in India and is a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 ; (am) “sectoral cap” means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity and debt instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity.

Explanation: (i) FCCBs and DRs having underlying of instruments being in the nature of debt shall not be included in the sectoral cap; (ii) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned under the sectoral cap; (an) “startup company” means a private company incorporated under the Companies Act, 2013 and identified under G.S.R. 180(E), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry; (ao) “sweat equity shares” means sweat equity shares defined under the Companies Act, 2013; (ap) “transferable development rights (TDR)” shall have the meaning assigned to it in the regulations made under sub-section (2) of section 6 of the Act; (aq) “unit” means a beneficial interest of an investor in an investment vehicle; (ar) “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 (Alternative Investment Funds) Regulations, 2012. (2) The words and expressions used but not defined in these rules shall have the same meanings respectively assigned to them in the Act, rules and regulations.

## **CHAPTER II GENERAL CONDITIONS APPLICABLE TO ALL INVESTORS**

### **3. Restriction on investment in India 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 make any investment in India: Provided that an investment made in accordance with the Act or the rules or the regulations made thereunder and held on the date of commencement of these rules shall be deemed to have been made under these rules and shall accordingly be governed by these rules: Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons and in consultation with the Central Government, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

### **4. Restriction on receiving investment**

Save as otherwise provided in the Act or rules or regulations made thereunder, an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books: Provided that the Reserve Bank may, on an application made to it and for sufficient reasons and in consultation with the Central Government, permit an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

### **5. Exemption for making investment by a person resident outside India**

## **5. Permission for making investment by a person resident outside India**

Unless otherwise specified in these rules or the Schedules, any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for such investment as laid down in these rules.

# **CHAPTER III INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA**

## **6. Investments by person resident outside India**

A person resident outside India may make investment as under:- (a) may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the terms and conditions specified in Schedule I: Provided that a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot purchase equity instruments without the prior government approval: Provided further that a citizen of Pakistan or an entity incorporated in Pakistan cannot invest in defence, space, atomic energy and sectors or activities prohibited for foreign investment even through the government route. Note: Issue or transfer of "participating interest or right" in oil fields by Indian companies to a person resident outside India would be treated as foreign investment and shall comply with the conditions laid down in Schedule I. (b) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an LLP, in the manner and subject to the terms and conditions specified in Schedule VI. (c) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an investment vehicle, in the manner and subject to the terms and conditions specified in Schedule VIII. (d) A person resident outside India may invest in the depository receipts (DRs) issued by foreign depositories against eligible securities in the manner and subject to the terms and conditions specified in Schedule IX.

## **7. Acquisition through rights issue or bonus issue**

A person resident outside India and having investment in an Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue, provided that,- (a) the offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013; (b) such issue shall not result in a breach of the sectoral cap applicable to the company; (c) the share holding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of these rules; (d) in case of a listed Indian company, the rights issue to persons resident outside India shall be at a price determined by the company; (e) in case of an unlisted Indian company, the rights issue to persons resident outside India shall not be at a price less than the price offered to persons resident in India; (f) such investment made through rights issue or bonus issue shall be subject to the conditions as are applicable at the time of such issue; (g) the mode of payment and attendant conditions for such transactions shall be specified by the Reserve Bank. (h). an individual who is a person resident outside India exercising a right which was issued when he or she was a person resident in India shall hold the equity instruments (other than share warrants) so acquired on exercising the option on a non-repatriation basis. Explanation: The above conditions shall also be applicable in case a person resident outside India makes investment in equity instruments (other than share warrants) issued by an Indian company as a rights issue that are renounced by the person to whom it was offered.

## **8. Issue of Employees Stock Options and sweat equity shares to persons resident outside India**

An Indian company may issue "employees' stock option" and/ or "sweat equity shares" to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India: Provided that. - (a) the scheme has been drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014, as the case may be; (b) the "employee's stock option" or "sweat equity shares" so issued under the rules or regulations are in compliance with the sectoral cap applicable to the said company; (c) the issue of "employee's stock option" or "sweat equity shares" in a company where investment by a person resident outside India is under the approval route shall require prior government approval and issue of "employee's stock option" or "sweat equity shares" to a citizen of Bangladesh or Pakistan shall require prior government approval : Provided further that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

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

## **person resident outside india**

A person resident outside India holding equity instruments of an Indian company or units in accordance with these rules or a person resident in India, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, specified in the Schedules of these rules and subject to the terms and conditions prescribed hereunder : (1) a person resident outside India, not being a non-resident Indian or an overseas citizen of India or an erstwhile overseas corporate body may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India; Explanation: It shall also include transfer of equity instruments of an Indian company pursuant to liquidation, merger, de-merger and amalgamation of entities or companies incorporated or registered outside India. Provided that.- (i) prior government approval shall be obtained for any transfer in case the company is engaged in a sector which requires government approval; (ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, the transfer by way of sale where the transferee intends to hold the equity instruments on a repatriable basis, shall be in compliance with and subject to the adherence to entry routes, sectoral caps or investment limits, as specified in these rules and attendant conditionalities for such investment, pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank from time to time; (2) A person resident outside India, holding equity instruments of an Indian company or units in accordance with these rules may transfer the same to a person resident in India by way of sale or gift or may sell the same on a recognised stock exchange in India in the manner specified by the Securities and Exchange Board of India : Provided that. - (i) the transfer by way of sale shall be in compliance with and subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time; (ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, conditions at item (i) of the proviso shall not apply. (3) A person resident in India holding equity instruments of an Indian company or units, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time; (4) A person resident in India holding equity instruments or units of an Indian company on a non- repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank, in the manner prescribed, and subject to the following conditions, namely:- (i) the donee is eligible to hold such a security under the Schedules of these Rules; (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme; Explanation: The five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme will be on cumulative basis by a single person to another single person. (iii) the applicable sectoral cap in the Indian company is not breached; (iv) the donor and the donee shall be "relatives" within the meaning in clause (77) of section 2 of the Companies Act, 2013; (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of fifty-thousand US Dollars; (vi) such other conditions as considered necessary in public interest by the Central Government. (5) A person resident outside India holding equity instruments of an Indian company containing an optionality clause in accordance with these rules and exercising the option or right, may exit without any assured return, subject to the pricing guidelines prescribed in these rules and a minimum lock-in period of one year or minimum lock-in period as prescribed in these rules, whichever is higher. (6) In case of transfer of equity instruments between a person resident in India and a person resident outside India, an amount not exceeding twenty five percent of the total consideration,- (i) may be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement; or (ii) may be settled through an escrow arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement; or (iii) may be indemnified by the seller for a period not exceeding eighteen months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller : Provided that the total consideration finally paid for the shares shall be compliant with the applicable pricing guidelines. (7) In case of transfer of equity instruments between a person resident in India and a person resident outside India, a person resident outside India may open an escrow account in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 and such escrow account may be funded by way of inward remittance through banking channels and/ or by way of guarantee issued by an authorised dealer bank, subject to the terms and conditions as specified in the Foreign Exchange Management (Guarantees) Regulations, 2000. (8) The transfer of equity instruments of an Indian company or units of an investment vehicle by way of pledge is subject to the following terms and conditions, namely :- (i) any person being a promoter of a company registered in India (borrowing company), which has raised external commercial

borrowing in compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing raised by the borrowing company subject to the following further 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 made in accordance with these rules and directions issued by the Reserve Bank; (C) the statutory auditor has certified that the borrowing company shall utilise or has utilised the proceeds of the external commercial borrowing for the permitted end-use only; (D) no person shall pledge any such share unless a no-objection has been obtained from an authorised dealer bank that the above conditions have been complied with; (ii) any person resident outside India holding equity instruments in an Indian company or units of an investment vehicle may pledge the equity instruments or units, as the case may be,- (A) in favour of a bank in India to secure the credit facilities being extended to such Indian company for bona fide purposes, (B) in favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company, (C) in favour of a non-banking financial company registered with the Reserve Bank to secure the credit facilities being extended to such Indian company for bona fide purposes, (D) subject to the authorised dealer bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank in this regard; (iii) in case of invocation of pledge, transfer of equity instruments of an Indian company or units shall be in accordance with entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge.

## **CHAPTER IV INVESTMENT BY FOREIGN PORTFOLIO INVESTOR (FPI)**

### **10. Investment by FPI**

A FPI may make investments as under: (1) A FPI may purchase or sell equity instruments of an Indian company which is listed or to be listed on a recognised stock exchange in India, and/or may purchase or sell securities other than equity instruments, in the manner and subject to the terms and conditions specified in Schedule II. 62 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] Note - A FPI may trade or invest in all exchange traded derivative contracts approved by Securities and Exchange Board of India from time to time subject to the limits specified by the Securities and Exchange Board of India and the conditions prescribed in Schedule II. (2) A FPI may purchase, hold, or sell Indian Depository Receipts (IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions as prescribed in Schedule X.

### **11. Transfer of equity instruments of an Indian company by FPI**

A FPI holding equity instruments of an Indian company or units in accordance with these rules, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in the respective Schedules of these rules and subject to the terms and conditions prescribed hereunder and as specified by the Securities and Exchange Board of India; (1) A FPI may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India; Explanation: For the purposes of this rule transfer shall also include transfer of equity instruments of an Indian company pursuant to liquidation, merger, de-merger and amalgamation of entities or companies incorporated or registered outside India. Provided that.- (i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires the Government approval. (ii) where the acquisition of equity instruments by FPI made under Schedule II of these rules has resulted in a breach of the applicable aggregate FPI limits or sectoral limits, the provisions of sub-paragraph a (iii) of paragraph (1) of Schedule II shall apply.

## **CHAPTER V INVESTMENT BY NON-RESIDENT INDIAN OR AN OVERSEAS CITIZEN OF INDIA**

### **12. Investment by NRI or OCI**

A NRI or an OCI may make investments as under:- (1) A NRI or an OCI may, on repatriation basis, purchase or sell equity instruments of a listed Indian company and other securities in the manner and subject to the terms and conditions prescribed in Schedule III. (2) A NRI or an OCI may, on non-repatriation basis, purchase or sell equity instruments of an Indian company or other securities or contribute to the capital of a LLP or a firm or proprietary concern, in the manner and subject to the terms and conditions specified in Schedule IV. Note: A NRI or an OCI may trade or invest in all exchange traded derivative contracts approved by the Securities and Exchange Board of India from time to time subject to the limits specified by Securities and Exchange Board of India and conditions prescribed in Schedule III. (3) A NRI or an OCI may purchase, hold, or sell Indian Depository Receipts



(IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions specified in Schedule X.

### **13. Transfer of equity instruments by NRI or OCI**

A NRI or an OCI holding equity instruments of an Indian company or units in accordance with these rules may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in the Schedules of these rules and subject to the terms and conditions prescribed hereunder : (1) A NRI or an OCI holding equity instruments of an Indian company or units on repatriation basis may transfer the same by way of sale or gift to any person resident outside India : Provided that,- (i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires Government approval; (ii) where the acquisition of equity instruments by an NRI or an OCI under the provisions of Schedule III of these rules has resulted in a breach of the applicable aggregate NRI or OCI limit or sectoral limits, the NRI or the OCI shall sell such equity instruments to a person resident in India eligible to hold such instruments within the time stipulated by the Reserve Bank of India in consultation with the Central Government and the breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale, provided the sale is within the prescribed time, shall not be reckoned as a contravention under these rules. (2) A NRI or an OCI or an eligible investor under Schedule IV of these rules, holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time; Provided that the entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions shall not apply in case the transfer is to an NRI or an OCI or an eligible investor under Schedule IV of these rules acquiring such investment. (3) A NRI or an OCI or an eligible investor under Schedule IV of these rules holding equity instruments or units of an Indian company on a non-repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank of India, in the manner prescribed, and subject to the following conditions, namely :- (i) the donee is eligible to hold such a security under relevant Schedules of these rules; (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each mutual fund scheme; Explanation: The five percent shall be on cumulative basis by a single person to another single person. (iii) the applicable sectoral cap in the Indian company is not breached; (iv) the donor and the donee shall be “relatives” within the meaning in clause (77) of section 2 of the Companies Act, 2013; (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50000; (vi) such other conditions as may be considered necessary in public interest by the Central Government. (4) A NRI or an OCI or an eligible investor specified under Schedule IV of these rules holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same by way of gift to an NRI or an OCI or an eligible investor under Schedule IV of these rules who shall hold it on a non-repatriable basis. (5) An erstwhile OCB may transfer equity instruments subject to the directions issued by the Reserve Bank of India from time to time in this regard. Explanation: “Overseas Corporate Body (OCB)” means an entity de-recognised through Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003.

## **CHAPTER VI INVESTMENT BY OTHER NON-RESIDENT INVESTORS**

### **14. Investment in securities by other non-resident investors**

The other non-resident investors may make investments in securities in the manner and subject to the terms and conditions specified in Schedule V.

### **15. Transfer of securities by other non-resident investors :**

The other non-resident investors, holding securities in accordance with these rules, may transfer the securities subject to such terms and conditions prescribed in Schedule V and as specified by the Securities and Exchange Board of India and the Reserve Bank.

## **CHAPTER VII INVESTMENT BY FOREIGN VENTURE CAPITAL INVESTOR**

### **16. Investment by FVCI**

A Foreign Venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII.

## **17. Transfer of equity instruments of an Indian company by or to a FVCI**

A FVCI holding equity instruments of an Indian company or units in accordance with these rules or a person resident in India, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in Schedule VII of these rules and as specified by the Securities and Exchange Board of India and the Reserve Bank.

## **CHAPTER VIII GENERAL PROVISIONS**

### **18. Issue of Convertible Notes by an Indian startup company**

(1) A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche. (2) A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment. (3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank. (4) A NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with Schedule IV of these rules. (5) A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.

### **19. Merger or demerger 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 demerger or otherwise of an Indian company, has been approved by the National Company Law Tribunal (NCLT) or competent authority, the transferee company or the new company, as the case may be, may issue equity instruments to the existing holders of the transferor company resident outside India, subject to the following conditions, namely:- (a) the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of investment by a person resident outside India : Provided that where the percentage is likely to breach the sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approval from the Central Government. (b) the transferor company or the transferee company or the new company shall not engage in any sector prohibited for investment by a person resident outside India. (2) where a scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company where any of the companies involved is listed on a recognised stock exchange in India, then the scheme of arrangement shall be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.

### **20. Reporting requirements**

The reporting requirements for any investment in India by a person resident in India shall be as specified by the Reserve Bank.

### **21. Pricing guidelines**

(1) The pricing guidelines specified in these rules shall not be applicable for any transfer by way of sale done in accordance with Securities and Exchange Board of India regulations where the pricing is specified by Securities and Exchange Board of India. (2) Unless otherwise prescribed in these rules, the price of equity instruments of an Indian company, - (a) issued by such company to a person resident outside India shall not be less than : (i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; (ii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian Company. (b) transferred from a person resident in India to a person resident outside India shall not be less than,- (i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company; (ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; (iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of

India or a practising Cost Accountant, in case of an unlisted Indian company. (c) transferred by a person resident outside India to a person resident in India shall not exceed : (i) the price worked out in accordance with the relevant Securities and Exchange Board of India guidelines in case of a listed Indian company; (ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 : Provided that the price is determined for such duration as specified in the Securities and Exchange Board of India Guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares; (iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian company. Explanation: The guiding principle shall be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment or agreement and shall exit at the price prevailing at the time of exit. (iv) in case of swap of equity instruments, subject to the condition that irrespective of the amount, valuation involved in the swap arrangement shall have to be made by a Merchant Banker registered with the Securities and Exchange Board of India or an investment banker outside India registered with the appropriate regulatory authority in the host country. (v) where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments shall be made at face value subject to entry route and sectoral caps. (vi) in case of share warrants, their pricing and the price or conversion formula shall be determined upfront: Provided that these pricing guidelines shall not be applicable for investment in equity instruments by a person resident outside India on a non-repatriation basis.

## **22. Taxes and remittances of sale proceeds**

(1) Taxes - All transaction under these rules shall be undertaken through banking channels in India and subject to the payment of applicable taxes and other duties or levies in India. (2) Remittance of sale proceeds : (a) 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 rules , the conditions prescribed in the relevant Schedule and as specified by the Reserve Bank. (b) 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 that - (i) the security was held by the seller on repatriation basis; and (ii) either the security has been sold in compliance with the pricing guidelines or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof.

## **23. Downstream investment**

(1) Indian entity which has received indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment. Explanation: Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to one hundred percent is permitted under automatic route and there are no FDI linked performance conditions. (2) With effect from the 31st day of July, 2012, downstream investment(s) made under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, by a banking company, as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 ( 10 of 1949) incorporated in India, which is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India, shall not count towards indirect foreign investment, however, their strategic downstream investment shall be counted towards indirect foreign investment for the company in which such investment is being made. (3) Guidelines for calculating total foreign investment in Indian companies are as follows , - (a) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment; (b) FCCBs and DRs having underlying of instruments in the nature of debt shall not be reckoned for total foreign investment; (c) the methodology for calculating total foreign investment shall apply at every stage of investment in Indian companies and thus in each and every Indian company; (d) for the purpose of downstream investment, the portfolio investment held as on 31st March of the previous financial year in the Indian company making the downstream investment shall be considered for computing its total foreign investment; (e) indirect foreign investment received by a wholly owned subsidiary of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment. (4) Downstream investment that is treated as indirect foreign investment for the investee entity shall be subject to the following conditions, namely :- (a) downstream investment shall have the approval of the Board of Directors as also a shareholders' Agreement. if any; (b) for the purpose of downstream investment. the Indian entity making the

downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets and the downstream investments may be made through internal accruals and for this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes. Further raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder. (5) Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to- (a) a person resident outside India, subject to the reporting requirements as specified by the Reserve Bank. (b) a person resident in India subject to adherence to pricing guidelines; (c) an Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India. (6) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these rules for the downstream investment made by it at second level and so on and so forth and such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis and such compliance of these rules shall be mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the regional office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the Registered Office. (7) The provisions (5) and (6) of rule 23 shall apply mutatis mutandis to a LLP. Note: Downstream investment that is treated as indirect foreign investment for the investee entity made in accordance with the guidelines in existence prior to the 13th February, 2009 shall not require any modification to conform to these rules and all such investments, after the said date, shall come under the ambit of these rules. Downstream investment that is treated as indirect foreign investment for the investee entity made between the 13th February, 2009 and 21st June 2013 which is not in conformity with these rules shall have to be intimated to the Reserve Bank by 3rd October, 2013 for treating such cases as compliant with these Rules. Explanation.- For the purposes of this rule,- (a) "ownership of an Indian company" shall mean beneficial holding of more than fifty percent of the equity instruments of such company and "ownership of an LLP" shall mean contribution of more than fifty percent in its capital and having majority profit share; (b) "company owned by resident Indian citizens" shall mean an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens and "LLP owned by resident Indian citizens" shall mean an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens; (c) "company owned by persons resident outside India" shall mean an Indian company that is owned by persons resident outside India and "LLP owned by persons resident outside India" shall mean an LLP that is owned by persons resident outside India; (d) "control" shall mean the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement and for the purpose of LLP, "control" shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP; (e) "company controlled by resident Indian citizens" means an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens and "LLP controlled by resident Indian citizens" shall mean an LLP, the control of which is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens; (f) "company controlled by persons resident outside India" shall mean an Indian company that is controlled by persons resident outside India and "LLP controlled by persons resident outside India" shall mean an LLP that is controlled by persons resident outside India; 68 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] (g) "downstream investment" shall mean investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity; (h) "holding company" shall have the same meaning as assigned to it under Companies Act, 2013; (i) "indirect foreign investment" means downstream investment received by an Indian entity from,- (A) another Indian entity (IE) which has received foreign investment and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India; or (B) an investment vehicle whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India : Provided that no person resident in India other than an Indian entity can receive Indirect Foreign Investment; (j) "total foreign investment" means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis; (k) "strategic downstream investment" means investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.

## **CHAPTER IX ACQUISITION AND TRANSFER OF**

# IMMOVABLE PROPERTY IN INDIA

## 24. Acquisition and transfer of property in India by a NRI or an OCI

A NRI or an OCI may - (a) acquire immovable property in India other than an agricultural land or farm house or plantation property: Provided that the consideration, if any, for transfer, shall be made out of : (i) funds received in India through banking channels by way of inward remittance from any place outside India ; or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder: Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause; (b) acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013; (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:- (i) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ; or (ii) from a person resident in India; (d) transfer any immovable property in India to a person resident in India; (e) transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.

## 25. Joint acquisition by the spouse of a NRI or an OCI

A person resident outside India, not being an NRI or an OCI, who is a spouse of an NRI or an OCI may acquire one immovable property (other than agricultural land or farm house or plantation property), jointly with his or her NRI or OCI spouse : Provided that - (a) consideration for transfer, shall be made out of - (i) funds received in India through banking channels by way of inward remittance from any place outside India; or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank; (b) no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause : Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property : Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

## 26. Acquisition of immovable property for carrying on a permitted activity

A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a Branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may - (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity: Provided that,- (i) all applicable laws, rules, regulations, for the time being in force are duly complied with; and (ii) the person files with the Reserve Bank a declaration in the Form IPI as specified by the Reserve Bank from time to time, not later than ninety days from the date of such acquisition; (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) of rule 26: Provided that no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

## 27. Purchase or sale of immovable property by Foreign Embassies or Diplomats or Consulate Generals

A Foreign Embassy or Diplomat or Consulate General may purchase or sell immovable property in India other than agricultural land or plantation property or farm house provided : (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase or sale; and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

## 28. Acquisition by a long-term visa holder

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions, namely :- (a) the property shall not be located in and around restricted or protected areas so notified by the Central Government

and cantonment areas; (b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he or she is residing in India on LTV; (c) the registration documents of the property shall mention the nationality and the fact that such person is on LTV; (d) the property of such person may be attached or confiscated in the event of his or her indulgence in anti-India activities; (e) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP) or Foreigners Registration Office (FRO) or Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division); 70 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] (f) such person shall be eligible to sell the property only after acquiring Indian citizenship, however, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP or FRO or FRRO concerned.

## **29. Repatriation of sale proceeds**

(1) A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section. (2) In the event of sale of immovable property other than agricultural land or farm house or plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:- (a) 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 or the provisions of these rules; (b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External Account; (c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties. (3) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

## **30. Prohibition on transfer of immovable property in India**

(1) Save as otherwise provided in the Act or rules, no person resident outside India shall transfer any immovable property in India: Provided that:- (a) the Reserve Bank may, for sufficient reasons, permit the transfer subject to such conditions as may be considered necessary; (b) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000; (c) an authorised dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender : Provided further that :- (i) the funds shall be used by the borrowing company only for its core business purposes overseas; (ii) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender. (2) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition.

## **31. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries**

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease not exceeding five years : 1Hkkx Ilµ[k.M 3(ii)° Hkkjr dk jkti=k % vlk/kj.k 71 Provided that this prohibition shall not apply to an OCI. Explanation: For the purpose of this rule, the term "citizen" shall include natural persons and legal entities.

## **32. Miscellaneous**

Any transaction involving acquisition or transfer of immovable property under these rules shall be

undertaken:- (a) through banking channels in India; (b) subject to payment of applicable taxes and other duties or levies in India.

### **33. Savings**

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these rules.

## **SCHEDULE I (See rule 6(a)) Purchase or sale of equity instruments of an Indian company by a person resident outside India**

### **(1) Purchase or sale of equity instruments of an Indian company by a person resident outside India**

(a) An Indian company may issue equity instruments to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities prescribed in this Schedule. (b) A person resident outside India may purchase equity instruments of a listed Indian company on a stock exchange in India: Provided that - (i) the person resident outside India making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control; (ii) the amount of consideration may be paid as per the mode of payment specified by the Reserve Bank or out of the dividend payable by Indian investee company in which the person resident outside India has acquired and continues to hold the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 provided the right to receive dividend is established and the dividend amount has been credited to a specially designated non-interest bearing rupee account for acquisition of shares on the recognised stock exchange. (c) A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no FDI linked performance conditions, may issue equity instruments to the said non-resident entity against pre-incorporation or pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its authorised capital or USD 500,000 whichever is less, subject to the condition that within thirty days from the date of issue of equity instruments but not later than one year from the date of incorporation or such time as the Reserve Bank permits, the Indian company shall report the transaction to the Reserve Bank as per the reporting requirements as specified by the Reserve Bank. (d). An Indian company may issue, subject to compliance with the conditions prescribed by the Central Government and/or the Reserve Bank from time to time, equity instruments to a person resident outside India, if the Indian investee company is engaged in an automatic route sector, against,- (i) swap of equity instruments; or (ii) import of capital goods or machinery or equipment (excluding second-hand machinery); or (iii) pre-operative or pre-incorporation expenses (including payments of rent etc.) : Provided that the Government approval shall be obtained if the Indian investee company is engaged in a sector under Government route and the applications for approval shall be made in the manner prescribed by the Central Government from time to time. 72 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] (e) An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted under the Act or the rules and regulations framed or directions issued thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder or has been permitted by the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder: Provided that in case where permission has been granted by the Reserve Bank for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under the Act or the rules or the regulations framed thereunder have been completed. (f) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

### **(2) Sectors prohibited for FDI**

(a) Lottery business including Government or private lottery, online lotteries, etc. (b) Gambling and betting including casinos, etc. (c) Chit funds (d) Nidhi company (e) Trading in Transferable Development Rights (f) Real estate business or construction of farm houses Explanation: For the purpose of this rule, 'real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014. (g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. (h) Activities or sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities mentioned in paragraph (9) of Schedule I) (i) Financing to the Government or

permitted activities mentioned in paragraph (3) of Schedule I) (I) Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

### **(3) Permitted sectors, entry routes and sectoral caps for total foreign investment**

Unless otherwise specified in these Rules or the Schedules, the entry routes and sectoral caps for the total foreign investment in an Indian entity shall be as follows, namely :- (a) Entry routes.- (i) “automatic route” means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank or the Central Government; (ii) “government route” means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval. (iii) Aggregate foreign portfolio investment up to forty-nine percent of the paid-up capital on a fully diluted basis or the sectoral or statutory cap, whichever is lower, shall not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India and other investments by a person resident outside India shall be subject to the conditions of Government approval and compliance of sectoral conditions as laid down in these rules. (b) Sectoral caps.— (i) Sectoral cap for the sectors or activities specified in the table is the limit indicated against each sector. The total foreign investment shall not exceed the sectoral or statutory cap. (ii) Foreign investment in the following sectors or activities is subject to applicable laws or regulations, security and other conditionalities. (iii) In sectors or activities not listed below or not prohibited under paragraph (2) of Schedule I of these rules, foreign investment is permitted up to one hundred percent on the automatic route, subject to applicable laws or regulations, security and other conditionalities : Provided that foreign investment in financial services other than those indicated under serial number “F” below would require prior approval of the Government . (iv) Wherever there is a requirement of minimum capitalisation, it shall include premium received along with the face value of the equity instrument, only when it is received by the company upon issue of such instruments to the person resident outside India and the amount paid by the transferee during post-issue transfer beyond the issue price of the capital instrument, shall not be taken into account while calculating minimum capitalization requirement. (v) (A) Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, shall require prior approval of the Government . Note: Compliance to these rules by the core investment companies is in addition to the compliance of the regulatory framework prescribed to such companies as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder. (v) (B) Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, shall be under 100% automatic route. (vi) For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment that is treated as indirect foreign investment for the investee entity, may receive investment in its equity instruments from persons resident outside India under automatic route, however, approval of the Government shall be required for such companies for undertaking activities which are under Government route and as and when such a company commences business or makes downstream investment that is treated as indirect foreign investment for the investee entity, it shall have to comply with the relevant sectoral conditions on entry route, conditionalities and caps. (vii) The onus of compliance with the sectoral or statutory caps on such foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment. (viii) Wherever the person resident outside India who has made foreign investment specifies a particular auditor or audit firm having international network for the audit of the Indian investee company, then audit of such investee company shall be carried out as joint audit wherein one of the auditors is not part of the same network.

## **SCHEDULE II (See rule 10(1)) Investments by Foreign Portfolio Investors**

### **(1) Purchase or sale of equity instruments by Foreign Portfolio Investors**

(a) Purchase and sale of equity instruments.- A FPI may purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange in India subject to the following conditions, namely:- (i) The total holding by each FPI or an investor group, shall be less than 10 percent of the total paid-up equity capital on a fully diluted basis or less than 10 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and



the total holdings of all FPIs put together, including any other direct and indirect foreign investments in the Indian company permitted under these rules, shall not exceed 24 per cent of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants. The said limit of 10 percent and 24 percent shall be called the individual and aggregate limit, respectively. (ii) With effect from the 1st April, 2020, the aggregate limit shall be the sectoral caps applicable to the Indian company as laid out in sub-paragraph (b) of paragraph 3 of Schedule I of these rules, with respect to its paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid up value of each series of debentures or preference shares or share warrants: Provided that the aggregate limit as provided above may be decreased by the Indian company concerned to a lower threshold limit of 24% or 49% or 74% as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively before 31st March, 2020: Provided further, that the Indian company which has decreased its aggregate limit to 24% or 49% or 74%, may increase such aggregate limit to 49% or 74% or the sectoral cap or statutory ceiling respectively as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively: 1Hkkx Ilμ[k.M 3(ii)° Hkkjr dk jkti=k % vlk/kj.k 95 Provided also that once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold: Provided also that the aggregate limit with respect to an Indian company in a sector where FDI is prohibited shall be 24 per cent. Explanation: In case, two or more FPI's including foreign Governments/their related entities are having common ownership, directly or indirectly, of more than fifty percent or common control, all such FPI's shall be treated as forming part of an investor group. Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner. (iii) The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within 5 trading days from the date of settlement of the trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within 7 trading days from the date of settlement of the trades causing the breach. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under these Rules. (iv) The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of 10 percent limit for FPI investments in a single company, if they form part of an investor group. However, certain foreign Government agencies and its related entities may be exempt from such clubbing requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government. (v) A FPI may purchase equity instruments of an Indian company through public offer or private placement, subject to the individual and aggregate limits specified under this Schedule: Provided that - (A) in case of public offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and (B) in case of issue by private placement, the price is not less than- (a) the price arrived in terms of guidelines issued by the Securities and Exchange Board of India, or (b) the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Merchant Banker or Chartered Accountant or a practicing Cost Accountant, as applicable registered with the Securities and Exchange Board of India (vi) A FPI may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank and the Securities and Exchange Board of India from time to time. (vii) Investments made under this Schedule shall be subject to the limits and margin requirements specified by the Reserve Bank or the Securities and Exchange Board of India as well as the stipulations regarding collateral securities as specified by the Reserve Bank from time to time.

## **(b) Purchase or sale of securities other than equity instruments by FPIs**

(i) A FPI may purchase units of domestic mutual funds or Category III Alternative Investment Fund or offshore fund for which no objection is issued in accordance with the SEBI (Mutual Fund) Regulations, 1996, which in turn invest more than 50 percent in equity instruments on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India and the Reserve Bank. (ii) An FPI may purchase units of REITs and InVITs on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India. 96 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] (2) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

**SCHEDULE III (Sec. 4(4)) Investments by Non-Resident**

## **SCHEDULE III (See rule 12(1)) investments by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis**

### **(1) Purchase or sale of equity instruments of a listed Indian company**

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognized stock exchange in India, subject to the following conditions, namely :- (a) NRIs or OCIs may purchase and sell equity instruments through a branch designated by an Authorized Dealer for the purpose; (b) The total holding by any individual NRI or OCI shall not exceed 5 percent of the total paid-up equity capital on a fully diluted basis or shall not exceed 5 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together shall not exceed ten percent of the total paid-up equity capital on a fully diluted basis or shall not exceed ten percent of the paid-up value of each series of debentures or preference shares or share warrants: Provided that the aggregate ceiling of 10 percent may be raised to 24 percent if a special resolution to that effect is passed by the General Body of the Indian company.

### **(2) Purchase or sale of units of domestic mutual funds**

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may without limit purchase or sell units of domestic mutual funds which invest more than 50 percent in equity.

### **(3) Purchase or sale of shares in public sector enterprises**

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit purchase or sell shares in public sector enterprises being disinvested by the Central Government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

### **(4) Subscription to National Pension System**

A NRI or an OCI may subscribe to the National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the Pension Fund Regulatory and Development Authority Act. The annuity/ accumulated saving will be repatriable: Provided that NRIs or OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognised Stock Exchanges in India for their transactions in exchange traded derivative contracts as prescribed in sub-clause (2) of clause 12 of these Rules. (5) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

## **SCHEDULE IV (See rule 12(2)) Investment by NRI or OCI on non-repatriation basis**

### **A. Purchase or sale of equity instruments of an Indian company or units or contribution to the capital of a LLP by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Non-repatriation basis**

#### **(1) Purchase or sale of equity instruments or convertible notes or units or contribution to the capital of a LLP**

(a) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, may purchase or contribute, as the case may be, on non-repatriation basis the following, namely:- (i) a equity instrument issued by a company without any limit either on the stock exchange or outside it; (ii) units issued by an investment vehicle without any limit, either on the stock exchange or outside it; (iii) The capital of a Limited Liability Partnership without any limit; (iv) convertible notes issued by a startup company in accordance with these rules. (b) The investment detailed at sub-paragraph (a) of paragraph (1) above shall be deemed to be domestic investment at par with the investment made by residents.

#### **(2) Purchase or sale of units of domestic mutual funds**

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may without limit purchase or sell units of domestic mutual funds on non-repatriation basis which invest more than 50% in equity.

#### **(3) Prohibition on purchase of equity instruments of certain companies**

Notwithstanding anything contained in paragraph 1, a NRI or an OCI including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, shall not make any investment, under this Schedule, in equity instruments or units of a Nidhi company or a company engaged in agricultural or plantation activities or real estate business or construction of farm houses or dealing in transfer of development rights. Explanation: Real estate business shall have the same

meaning as specified in sub-paragraph (b) of paragraph (3) of Schedule 1.

#### **(4) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank**

### **B. Investment in a firm or a proprietary concern**

#### **(1) Contribution to capital of a firm or a proprietary concern**

A NRI or an OCI may invest on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or proprietary concern is not engaged in any agricultural or plantation activity or print media or real estate business. Explanation: Real estate business shall have the same meaning as specified in sub paragraph (b) of paragraph (3) of Schedule I.

#### **(2) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank**

## **SCHEDULE V (See Rule (14)) Investment by other non-resident investors**

### **Permission to other non-resident investors for purchase of securities**

(1) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks may purchase securities subject to such terms and conditions as may be specified by the Reserve Bank and the Securities and Exchange Board of India. (2) "Eligible Foreign Entity (EEE)" as defined in SEBI circular dated the 9th October 2018 and having actual exposure to Indian physical commodity market may participate in domestic commodity derivative markets in accordance with framework specified by the Securities and Exchange Board of India. 98 THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)] (3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank

## **SCHEDULE VI (See rule 6(b)) Investment in a Limited Liability Partnership (LLP)**

(a) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), not being a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI), may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100 per cent is permitted under automatic route and there are no FDI linked performance conditions. (b) Investment by way of "profit share" shall fall under the category of reinvestment of earnings. (c) Investment in a LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008. (d) A company having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a LLP under the automatic route. (e) A LLP having foreign investment, engaged in a sector where foreign investment up to 100 per cent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a company under the automatic route. (f) Investment in a LLP either by way of capital contribution or by way of acquisition or transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted or adopted as per market practice (hereinafter referred to as "fair price of capital contribution or profit share of a LLP") and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practising Cost Accountant or by an approved valuer from the panel maintained by the Central Government. (g) In case of transfer of capital contribution or profit share from a person resident in India to a person resident outside India, the transfer shall be for a consideration not less than the fair price of capital contribution or profit share of a LLP. Further, in case of transfer of capital contribution or profit share from a person resident outside India to a person resident in India, the transfer shall be for a consideration which is not more than the fair price of the capital contribution or profit share of an LLP. (h) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank .

## **SCHEDULE VII (See rule 16) Investment by a Foreign Venture Capital Investor (FVCI)**

(1) Subject to the terms and conditions as may be laid down by the Central Government, a Foreign Venture Capital Investor (FVCI) may purchase, - (i) securities, issued by an Indian company engaged in any sector mentioned in paragraph (4) of this Schedule and whose securities are not listed on a

recognised stock exchange at the time of issue of the said securities; (ii) units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF. (iii) equity or equity linked instrument or debt instrument issued by an Indian 'start-up' irrespective of the sector in which the start-up is engaged. The definition of 'start-up' shall be as per Department for Promotion of Industry and Internal Trade's Notification No. G.S.R. 364(E), dated the 11th April, 2018 : Provided that if the investment is in equity instruments, then the sectoral caps, entry routes and attendant conditions shall apply. (2) A FVCI may purchase the securities or instruments mentioned above either from the issuer of these securities/ instruments or from any person holding these securities or instruments. The FVCI may invest in securities on a recognised stock exchange subject to the provisions of the Securities and Exchange Board of India (FVCI) Regulations, 2000. (3) The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security or instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes or funds set up by the VCFs or Cat-I AIFs. (4) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank of India (5) List of sectors in which a Foreign Venture Capital Investor is allowed to invest is as follows :- (a) biotechnology; (b) IT related to hardware and software development; (c) nanotechnology; (d) seed research and development; (e) research and development of new chemical entities in pharmaceutical sector. (f) dairy industry; (g) poultry industry; (h) production of bio-fuels; (i) hotel-cum-convention centres with seating capacity of more than three thousand; (j) Infrastructure sector. The term "Infrastructure Sector" has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide notification F. No. 13/06/2009- INF, dated the March 27, 2012 as amended or updated.

## **SCHEDULE VIII (See Rule 6(c)) Investment by a person resident outside India in an Investment Vehicle**

(1) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh) may invest in units of Investment Vehicles. (2) A person resident outside India who has acquired or purchased units in accordance with this Schedule may sell or transfer in any manner or redeem the units as per regulations framed by the Securities and Exchange Board of India or directions issued by the Reserve Bank. (3) An Investment vehicle may issue its units to a person resident outside India against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle. (4) Investment made by an Investment Vehicle into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India. Provided that for sponsors or managers or investment managers organised in a form other than companies or LLPs, Securities and Exchange Board of India shall determine whether the sponsor or manager or investment manager is foreign owned and controlled. (ii) Explanation: "Control" of the AIF should be in the hands of "sponsors" and "managers or investment managers", with the general exclusion to others. In case the "sponsors" and "managers or investment managers" of the AIF are individuals, for the treatment of down-stream investment by such AIF as domestic, "sponsors" and "manager or investment managers" should be resident Indian citizens. (5) An Alternative Investment Fund Category III which has received any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest under the Act or rules or regulations made thereunder. (6) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank .

## **SCHEDULE IX (See rule 6(d)) Investment in Depository Receipts by a person resident outside India**

(1) Issue or transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s).- (a) Any security or unit in which a person resident outside India is allowed to invest under these rules shall be eligible instruments for issue of Depository Receipts in terms of Depository Receipts Scheme, 2014 (DR Scheme, 2014). (b) A person shall be eligible to issue or transfer eligible instruments to a foreign depository for the purpose of issuance of depository receipts in accordance with the DR Scheme, 2014 and guidelines issued by the Central Government in this regard. (c) A domestic custodian may purchase eligible instruments on behalf of a person resident outside India, for the purpose of converting the instruments so purchased into depository receipts in terms of DR Scheme, 2014. (d) The aggregate of eligible instruments which may be issued or transferred to foreign depositories, along with eligible instruments already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible instruments under the Act, rules or regulations framed thereunder. (e) The eligible instruments shall not be issued or transferred to

rules or regulations framed thereunder. (e) The eligible instruments shall not be issued or transferred to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors under the applicable laws. (2) Saving.- Depository Receipts issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 shall be deemed to have been issued under the corresponding provisions of DR Scheme 2014 and have to comply with the provisions specified in this Schedule.

## **SCHEDULE X (See rule 10(2)) Issue of Indian Depository Receipts**

(1) Issue of IDRs.-Companies incorporated outside India may issue IDRs through a Domestic Depository, to persons resident in India and outside India, subject to the following conditions: (a) the issue of IDRs is in compliance with the Companies (Registration of Foreign Companies) Rules, 2014 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; (b) any issue of IDRs by financial or banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulator(s); (c) IDRs shall be denominated in Indian rupee only; (d) the proceeds of the issue of IDRs shall be immediately repatriated outside India by the companies issuing such IDRs. (2) Purchase or sale of IDRs.- A FPI or a NRI or an OCI may purchase, hold, or sell IDRs, subject to the following terms and conditions, namely:- (a) the mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be as specified by the Reserve Bank; (b) limited two way fungibility of IDRs shall be permissible subject to the terms and conditions stipulated by the Reserve Bank in this regard; (c) IDR shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue; (d) Redemption or conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.