

India

Consolidated FDI Policy Circular (2010)

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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 1: INTENT AND OBJECTIVE

1.1 Intent and Objective

1.1.1

Foreign Direct Investment (FDI) is considered as a major source of non-debt financial resource for the economic development. FDI flows into India have grown consistently since liberalization and are an important component of foreign capital since FDI infuses long term sustainable capital in the economy and contributes towards technology transfer, development of strategic sectors, greater innovation, competition and employment creation amongst other benefits. Therefore, it is the intent and objective of the Government of India to attract and promote FDI in order to supplement domestic capital, technology and skills for accelerated economic growth and development. FDI, as distinguished from Foreign Portfolio Investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

1.1.2

The Government has put in place a policy framework on FDI, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated on an annual basis, to capture and keep pace with the regulatory changes, effected in the interregnum. The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Consolidated FDI Policy Circular/Press Notes/Press Releases which are notified by the Department of Economic Affairs (DEA), Ministry of Finance, Government of India as amendments to the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 under the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant Notification under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will prevail. The payment of inward remittance and reporting requirements are stipulated under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 issued by the Reserve Bank of India (RBI). The regulatory framework, over a period of time, thus, consists of FEMA and Rules/Regulations thereunder, Consolidated FDI Policy Circular, Press Notes, Press Releases, Clarifications, etc.

1.1.3

The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by the DPIIT, which were in force as on October 15, 2020 and reflects the FDI Policy as on October 15, 2020. This Circular accordingly will take effect from October 15, 2020 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

1.1.4

Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to October 15, 2020, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, and applicable provisions under the FEMA and Rules/Regulations thereunder, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

CHAPTER 2: DEFINITIONS

2.1 DEFINITIONS

2.1.1

'AD Category-I Bank' means a bank (Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.

2.1.2

'Authorized Bank' shall have the meaning assigned to it under the Foreign Exchange Management (Deposit) Regulations, 2016.

2.1.3

'Authorized Dealer' means a person authorized as an authorized dealer under subsection (1) of section 10 of FEMA.

2.1.4

'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 of India or the Central Government.

2.1.5

'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants. Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, 'warrant' includes Share Warrant issued by an Indian Company in accordance with the regulations by the Securities and Exchange Board of India (SEBI) and the provisions of the Companies Act, 2013.

2.1.6

'Capital account transaction' means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions as per Section 6 of FEMA.

2.1.7

'Competent Authority' means the concerned Administrative Ministry/Department empowered to grant government approval for foreign investment under the extant FDI Policy and FEMA Rules/Regulations.

2.1.8

'Control' shall include the right to appoint a 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 their shareholding or management rights or shareholders agreements or voting agreements. For the purposes of Limited Liability Partnership, 'control' will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.

2.1.9

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

2.1.10

'Depository Receipt' (DR) 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.

2.1.11

'Domestic Custodian' means a custodian of securities registered with the SEBI in accordance with the SEBI (Custodian of Securities) Regulations, 1996.

2.1.12

'Domestic Depository' means a custodian of securities registered with the SEBI and authorised by the issuing entity to issue Indian depository receipts.

2.1.13

'ESOP' means 'Employees' stock option' as defined under the Companies Act, 2013 and issued in accordance with the Companies Act, 2013 and SEBI regulations, as applicable.

2.1.14

'Erstwhile Overseas Corporate Body'(OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs) Regulations, 2003 and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the regulations

eligible to undertake transactions pursuant to the general permission granted under the regulations under FEMA.

2.1.15

'Foreign Currency Convertible Bond' (FCCB) means a bond issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, as amended from time to time.

2.1.16

'FDI' or 'Foreign Direct Investment' means investment through capital 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 capital 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

2.1.17

'Foreign Investment' means any investment made by a person resident outside India on a repatriable basis in capital 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;

2.1.18

'FDI linked performance conditions' means the sector specific conditions for companies receiving foreign investment.

2.1.19

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

2.1.20

'Foreign Portfolio Investment' means any investment made by a person resident outside India through capital instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of capital instrument of a listed Indian company.

2.1.21

'Foreign Portfolio Investor' (FPI)¹ means a person registered in accordance with the provisions of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time.

2.1.22

'FVCI' means a Foreign Venture Capital Investor incorporated and established outside India and registered with the SEBI under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, as amended from time to time.

2.1.23

'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

2.1.25

'Group Company' means two or more enterprises which, directly or indirectly, are in a position to: (i) exercise twenty-six percent or more of voting rights in other enterprise; or (ii) appoint more than fifty percent of members of Board of Directors in the other enterprise.

2.1.26

'Holding Company' shall have the same meaning as assigned to it under the Companies Act, as amended from time to time.

2.1.27

'Indian Company' means a company incorporated in India under the Companies Act, as applicable.

2.1.28

'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;

2.1.29

'Investment Vehicle' shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include (i) Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, (ii) Infrastructure Investment Trusts

(Invits) governed by the SEBI (Invits) Regulations, 2014, and (iii) Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012

2.1.30

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

2.1.31

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

2.1.32

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

2.1.33

'Limited Liability Partnership or LLP' means a Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.

2.1.34

'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.

2.1.35

'Manufacture', with its grammatical variations, means a change in a non-living physical object or article or thing- (a) 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 (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

2.1.36

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

2.1.37

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

2.1.38

'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).

2.1.39

A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

2.1.40

'Person' includes- (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals whether incorporated or not, (vi) every artificial juridical person, not falling within any of the preceding subclauses, and (vii) any agency, office, or branch owned or controlled by such person.

2.1.41

'Person resident in India' means- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include- (A) A person who has gone out of India or who stays outside India, in either case- (a) for or on taking up employment outside India, or (b) for carrying on outside India a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; (B) A person who has come to or stays in India, in either case, otherwise than- (a) for or on taking up employment in India; or (b) for carrying on in India a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; (ii) any person or body corporate registered or incorporated in India, (iii) an office, branch or agency in India owned or controlled by a person resident outside India, (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

2.1.42

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

2.1.43

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

2.1.44

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

2.1.45

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

2.1.46

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

2.1.47

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

2.1.48

'Startup Company' means a private company incorporated under the Companies Act, 2013 and identified under G.S.R. 127(E) dated 19th February, 2019 issued by the DPIIT, Ministry of Commerce and Industry.

2.1.49

'Sweat Equity Shares' means sweat equity shares defined under the Companies Act, 2013.

2.1.50

'Total Foreign Investment' means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis.

2.1.51

'Transferable Development Rights' (TDR) shall have the meaning assigned to it in the regulations made under subsection (2) of section 6 of FEMA.

2.1.52

'Unit' shall mean beneficial interest of an investor in an Investment Vehicle

2.1.53

'Venture Capital Fund' (VCF) 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.

CHAPTER 3: GENERAL CONDITIONS ON FDI

3.1 ELIGIBLE INVESTORS

3.1.1

(a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

3.1.2

NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

3.1.3

OCBs have been derecognized as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments as incorporated non-resident entities in accordance with the FDI Policy and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

3.1.4

A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.

3.1.5

Foreign Portfolio Investors (FPI) may make investments in the manner and subject to the terms and conditions specified in Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

3.1.6

Registered FPIs and NRIs can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges as per the applicable Schedule under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time.

3.1.7

A Foreign Venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt

terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

3.1.8

An NRI or an OCI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

3.2 ELIGIBLE INVESTEE ENTITIES

3.2.1 Indian Company

Indian companies can issue capital against FDI.

3.2.2 Partnership Firm/Proprietary Concern

(i) A Non-Resident Indian (NRI) can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided; (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks. (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector. (c) Amount invested shall not be eligible for repatriation outside India.

(ii) Investments with repatriation option: NRIs may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

(iii) Investment by non-residents other than NRIs: A person resident outside India other than NRIs may make an application and seek prior approval of Reserve Bank for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

(iv) Restrictions: An NRI is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or print media.

3.2.3 Trusts

Investment by a person resident outside India is not permitted in Trusts other than in 'VCF' registered and regulated by SEBI and 'Investment vehicle'.

3.2.4 Limited Liability Partnerships (LLPs)

Foreign Investment in LLPs is permitted subject to the following conditions:

(i) Foreign Investment is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.

(ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

(iii) Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.

(iv) Foreign Investment in LLP is subject to the compliance of the conditions of LLP Act, 2008.

3.2.5 Investment Vehicle

An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (Invits) governed by the SEBI (Invits) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh) in the manner and subject to the terms and conditions specified under Schedule VIII of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

3.2.6 Startup Companies

Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance, as per the Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. In addition, start-ups can issue convertible notes to person resident outside India subject to the following conditions:

(i) A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty-five lakh rupees or more in a single tranche. Explanation: For the purpose of this Regulation, a 'startup company' means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G S R 127(F) dated 19th February 2019 issued by the DPIIT

accordance with notification number G.O.A. 121(2) dated 10th February, 2019 issued by the DPM, Ministry of Commerce and Industry, and as amended from time to time.

(ii) A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government. Explanation: For the purpose of this regulation, the issue of shares against such convertible notes shall have to be in accordance with the Schedule I of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

(iii) A startup company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time. Provided that an escrow account for the above purpose shall be closed immediately after the requirements are completed or within a period of six months, whichever is earlier. However, in no case continuance of such escrow account shall be permitted beyond a period of six months.

(iv) NRIs may acquire convertible notes on non-repatriation basis in accordance with Schedule IV of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

(v) 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 applicable pricing guidelines under FEMA. Prior approval from the Government shall be obtained for such acquisitions or transfers in case the startup company is engaged in a sector which requires Government approval.

(vi) The startup company issuing convertible notes shall be required to furnish reports as prescribed by the RBI.

3.2.7 Other Entities

FDI in resident entities other than those mentioned above is not permitted.

3.3 INSTRUMENTS OF INVESTMENTS, ISSUE/TRANSFER OF SHARES ETC.

3.3.1

Types of instruments for investment and provisions relating to issue/ transfer of shares are given at Annexure 1 & Annexure 2 respectively. Further, specific conditions of compliance for certain cases are given in Annexure-3.

3.4 ENTRY ROUTES FOR INVESTMENT

3.4.1

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

3.4.2

Foreign investment in sectors/activities under government approval route will be subject to government approval where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.

(v) It is clarified that foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule I (FDI), II (FPI), III (NRI), VI (LLPs), VII (FVCI), VIII(Investment Vehicles) and IX (DRs) of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. FCCBs and DRs having underlying of instruments which can be issued under Schedule IX, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument

under any arrangement shall be reckoned as foreign investment.

(vi) Investment by NRIs under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will be deemed to be domestic investment at par with the investment made by residents.

(vii) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and such investment will also be deemed domestic investment at par with the investment made by residents.

3.5 CAPS ON INVESTMENTS

3.5.1

Investments can be made by person resident outside India in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. The caps in various sector(s) are detailed in Chapter 5 of this Circular.

3.6 ENTRY CONDITIONS ON INVESTMENT

3.6.1

Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this Circular.

3.7 OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS

3.7.1

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

3.7.2

Establishment of branch office, liaison office or project office or any other place of business in India shall be governed by 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. Further, acquisition or transfer of immovable property in India by citizens of certain countries shall be regulated as per the relevant provisions under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time.

3.8 FOREIGN INVESTMENT INTO/DOWNSTREAM INVESTMENT BY ELIGIBLE INDIAN ENTITIES

3.8.1

The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company/LLP, at every stage of investment, including downstream investment, have been detailed in Annexure-4.

3.8.2

For the purpose of this chapter,

(i) 'Downstream investment' means indirect foreign investment, by an eligible Indian entity, into another Indian Company/LLP, by way of subscription or acquisition. Annexure-4 provides the guidelines for calculation of indirect foreign investment, with conditions specified in paragraph 1.2 (v).

(ii) 'Foreign Investment' would have the same meaning as in Annexure-4.

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

3.8.3.1 Foreign Investment in Investing Companies registered as Non-Banking Financial Companies (NBFC) with the RBI, being overall regulated, would be under 100% automatic route.

3.8.3.2 Foreign Investment in Core Investment Companies (CICs) and other investing companies, engaged in the activity of investing in the capital of other Indian company(ies)/LLPs, is permitted under Government approval route. CICs will have to additionally follow RBI's regulatory framework for CICs.

3.8.3.3 For undertaking activities which are under automatic route and without foreign investment linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to have infusion of foreign investment under automatic route. However, approval of the Government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps. Note: Foreign investment into other Indian companies/LLPs would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

3.8.4 Downstream investment by an eligible Indian entity which is not owned and/or controlled by resident entity(ies)

3.8.4.1 Downstream investment by an eligible Indian entity, which is not owned and/or controlled by resident entity(ies), into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating. Note: Downstream investment/s made by a banking company, as defined in clause(c) of Section 5 of the Banking Regulation Act, 1949, incorporated in India, which is owned and/or controlled by non-residents/a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

3.8.4.2 Downstream investments by eligible Indian entities/LLPs will be subject to the following conditions: (i) Such an entity is required to notify its downstream investment to RBI in Form DI as well as on Foreign Investment Facilitation Portal in the form available at www.fifp.gov.in within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme); (ii) Downstream investment by way of induction of foreign investment in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a share-holders agreement, if any; (iii) Issue/transfer/pricing/valuation of capital shall be in accordance with applicable FEMA/SEBI guidelines; (iv) For the purpose of downstream investment, the eligible Indian entities making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/LLPs, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.8.3 and 3.8.4.1. For the purposes of foreign investment policy, internal accruals will mean as profits transferred to reserve account after payment of taxes.

3.9 REMITTANCE, REPORTING AND VIOLATION

3.9.1

The Government has provided elaborated scheme for remittance, reporting and violation of FDI policy. These are available at Annexure-5.

CHAPTER 4: PROCEDURE FOR GOVERNMENT APPROVAL

4.1 COMPETENT AUTHORITY

4.1.1

Following are the Competent Authorities for grant of approval for foreign investment for sectors/activities requiring Government approval:

(i) Mining : Ministry of Mines

(ii) Defence

a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DPIIT :

Department of Defence Production, Ministry of Defence

b) Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959 : Ministry of Home Affairs

(iii) Broadcasting : Ministry of Information & Broadcasting

(iv) Print Media/Digital Media : Ministry of Information & Broadcasting

(v) Civil Aviation : Ministry of Civil Aviation

(vi) Satellites : Department of Space

(vii) Telecommunication : Department of Telecommunications

(viii) Private Security Agencies : Ministry of Home Affairs

(ix) (a) Applications involving investments from an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country {as required in terms of Press Note 3 of 2020 read with Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020 dated 22.04.2020} : Concerned Administrative Ministry/Department as identified by the DPIIT

(ix)(b) Cases pertaining to sectors/activities under Government approval route requiring security clearance as per the extant Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, FDI Policy and security guidelines, as amended from time to time : Nodal Administrative Ministries/Departments

(x) Trading (Multi Brand Retail Trading and Food Product retail trading) : Department for Promotion of

(x) Trading (Multi Brand Retail Trading and Food Product Retail Trading) : Department for Promotion of Industry and Internal Trade

(xi) FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government : Concerned Administrative Ministry/Department as identified by the DPIIT

(xii) Applications relating to issue of equity shares under the FDI policy under the Government route for import of capital goods/machinery/equipment (excluding second-hand machinery) : Concerned Administrative Ministry/Department as identified by the DPIIT

(xiii) Applications relating to issue of equity shares for pre-operative/pre-incorporation expenses (including payments of rent etc.) : Concerned Administrative Ministry/Department as identified by the DPIIT

(xiv) Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight : Department of Economic Affairs

(xv) Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company(ies) : Department of Economic Affairs

(xvi) Banking (Public and Private) : Department of Financial Services

(xvii) Pharmaceuticals : Department of Pharmaceuticals

4.1.2

In respect of sectors/activities which are presently under automatic route but required Government approval earlier as per the extant policy during the relevant period, concerned administrative Ministry/Department would be the Competent Authorities for the grant of post-facto approval for foreign investment.

4.1.3

In respect of applications in which there is a doubt about the Administrative Ministry/Department concerned, DPIIT shall identify the Administrative Ministry/Department where the application will be processed.

4.1.4

Proposals for foreign investment would be examined by Competent Authorities as per the Standard Operating Procedure laid down by DPIIT (available at <http://www.fip.gov.in/Forms/SOP.pdf>).

4.1.5

In case of proposals involving total foreign equity inflow of more than Rs 5000 crore, Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA).

4.1.6

The CCEA would also consider the proposals which may be referred to it by the Minister-in-charge of the concerned Competent Authority.

4.1.7

In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI policy or sectoral laws/regulations, concurrence of DPIIT shall compulsorily be sought by the Competent Authority.

4.1.8

The monitoring of the compliance of conditions under the FDI approvals, including the past cases approved by the Government, shall be done by the concerned Administrative Ministries/Departments.

4.2 CASES WHICH DO NOT REQUIRE FRESH APPROVAL

4.2.1

Companies may not require fresh approval of the Government for bringing in additional foreign investment into the same entity, in the following cases:

- (i) Entities, the activities of which had earlier required the prior approval of the Government and which had, accordingly, earlier obtained the prior approval of the Government for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- (ii) Entities, the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained the prior approval of the Government for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps;
- (iii) Additional foreign investment into the same entity where the prior approval of the Government had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18 of 1998 or Press Note 1 of 2005 and the prior approval of the Government under the FDI policy is not required for any other reason/purpose; and
- (iv) Additional foreign investment up to cumulative amount of Rs 5000 crore into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

4.3 ONLINE FILING OF APPLICATIONS FOR GOVERNMENT APPROVAL

4.3.1

Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at the Foreign Investment Facilitation Portal (www.fifp.gov.in).

CHAPTER 5: SECTOR SPECIFIC CONDITIONS ON FDI

5.1 PROHIBITED SECTORS

FDI is prohibited in:

- a) Lottery Business including Government/private lottery, online lotteries, etc.
- b) Gambling and Betting including casinos etc.
- c) Chit funds
- d) Nidhi company
- e) Trading in Transferable Development Rights (TDRs)
- f) Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential /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/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities mentioned in para 5.2).

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

5.2 PERMITTED SECTORS

- a) In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities. Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.
- b) Sectoral cap i.e. the maximum amount which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedules I (FDI), II (FPI), III (NRI), VI (LLPs), VII (FVCI), VIII (Investment Vehicles), and IX (DRs), respectively, of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. FCCBs and DRs having underlying of instruments which can be issued under Schedule IX, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.
- c) Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.
- d) The sectors which are already under 100% automatic route and are without conditionalities would not be affected.
- e) Notwithstanding anything contained in paragraphs a) and c) above, portfolio investment, up to aggregate foreign investment level as permitted under Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy.
- f) Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap.
- g) Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to amendments introduced through Press Note 8 (2015 Series).
- h) Wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.
- i) The onus of compliance of above provisions will be on the investee company

17. The onus of compliance of above provisions will be on the investee company.

5.2.1 AGRICULTURE & ANIMAL HUSBANDRY

Table of FDI Caps and Entry Routes by Sector [...]

5.2.1.1 OTHER CONDITIONS

I. The term “under controlled conditions” covers the following:

(i) ‘Cultivation under controlled conditions’ for the categories of floriculture, horticulture, cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically.

5.2.2 PLANTATION SECTOR

Table of FDI Caps and Entry Routes by Sector [...]

5.2.2.2 OTHER CONDITION

Prior approval of the State Government concerned is required in case of any future land use change.

5.2.3 MINING

Table of FDI Caps and Entry Routes by Sector [...]

5.2.3.3.2 OTHER CONDITIONS

(i) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.: (A) value addition facilities are set up within India along with transfer of technology; (B) disposal of tailings during the mineral separation shall be carried out in accordance with Rules framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

(ii) FDI will not be allowed in mining of “prescribed substances” listed in the Notification No. S.O. 61(E), dated 18.1.2006, issued by the Department of Atomic Energy.

(iii) “Associated Processing Infrastructure” as contained at Para 5.2.3.2 above includes coal washery, crushing, coal handling, and separation (magnetic and non-magnetic)

CLARIFICATION: (1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to ‘produce ‘Synthetic Rutile or Titanium Slag as an intermediate value-added product. (2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.

5.2.4 PETROLEUM & NATURAL GAS

Table of FDI Caps and Entry Routes by Sector [...]

5.2.5 MANUFACTURING

5.2.5.1 Subject to the provisions of the FDI policy, foreign investment in ‘manufacturing’ sector is under automatic route. Manufacturing activities may be either self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract, whether on Principal to Principal or Principal to Agent basis. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.

5.2.5.2 Notwithstanding the FDI policy provisions on trading sector, 100% FDI under Government approval route is allowed for retail trading, including through e-commerce, in respect of food products manufactured and/or produced in India.

5.2.6 DEFENCE

Table of FDI Caps and Entry Routes by Sector [...]

5.2.6.2 OTHER CONDITIONS

(i) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses.

(ii) Infusion of fresh foreign investment up to 49%, in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity /shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change.

Proposal for raising FDI beyond 49% from such companies will require Government approval.

(iii) Licence applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.

(iv) Foreign investment in the sector is subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.

(v) Investee company should be structured to be self-sufficient in the areas of product design and

development. The investee/joint venture company along with the manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.

(vi) Foreign Investments in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

5.2.7 BROADCASTING

5.2.7.1 BROADCASTING CARRIAGE SERVICES

Table of FDI Caps and Entry Routes by Sector [...]

Note: Infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.

5.2.7.2 BROADCASTING CONTENT SERVICES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.7.3 Detailed guidelines on the Broadcasting Sector are given in Annexure-6.

5.2.8 PRINT MEDIA

Table of FDI Caps and Entry Routes by Sector [...]

5.2.8.2 Publication of Indian editions of foreign magazines dealing with news and current affairs

5.2.8.2.1 OTHER CONDITIONS

(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.

(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008, as amended from time to time.

5.2.8.4 Publication of facsimile edition of foreign newspapers

5.2.8.4.1 Other Conditions

(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.

(ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, as applicable.

(iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.

5.2.9 CIVIL AVIATION

5.2.9.1-2

5.2.9.3 OTHER SERVICES UNDER CIVIL AVIATION SECTOR

Table of FDI Caps and Entry Routes by Sector [...]

DEFINITIONS: The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.

For the purposes of the Civil Aviation sector:

(i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;

(ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;

(iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;

(iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;

(v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;

(vi) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;

(vii) "Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;

public,

(viii) "Non-Scheduled air transport service" means any service which is not a scheduled air transport service;

(ix) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;

(x) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

OTHER CONDITIONS

(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.

(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above

(c) Foreign airlines are also allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:

(i) It would be made under the Government approval route, (ii) The 49% limit will subsume FDI and FPI investment, (iii) The investments so made would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations, (iv) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment and (v) All technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

(d) In addition to the above conditions, foreign investment in M/s Air India Ltd. shall be subject to the following conditions: (i) Foreign investment(s) in M/s Air India Ltd., including that of foreign airline(s) shall not exceed 49% either directly or indirectly except in case of those NRIs, who are Indian Nationals, where foreign investment(s) is permitted up to 100% under automatic route. (ii) Substantial ownership and effective control of M/s Air India Ltd. shall continue to be vested in Indian Nationals as stipulated in Aircraft Rules, 1937.

(e) FDI in Civil Aviation is subject to provisions of Aircraft Rules, 1937, as amended from time to time.

NOTE: (i) The FDI limits/entry routes mentioned at paragraph 5.2.9.2(1) and 5.2.9.2 (2) above, are applicable in the situation where there is no investment by foreign airline. Any investment by foreign airlines in companies operating in Air Transport Services, including in M/s Air India Limited, shall be subject to para (b) and (c) above. (ii) The dispensation for those NRIs, who are Indian Nationals regarding FDI up to 100% will also continue in respect of the investment regime specified at para (c) (ii) and (d) above.

5.2.10 CONSTRUCTION DEVELOPMENT: TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUCTURE

Table of FDI Caps and Entry Routes by Sector [...]

5.2.10.2

Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:

(A) (i) The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage. (ii) Notwithstanding anything contained at (A) (i) above, a foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed.

Further, transfer of stake from one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.

(B) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

(C) The Indian investee company will be permitted to sell only developed plots. For the purposes of this policy "developed plots" will mean plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.

(D) The Indian investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.

Government/Municipal/Local Body concerned.

(E) The State Government/Municipal/Local Body concerned, which approves the building/development plans, will monitor compliance of the above conditions by the developer.

NOTE:

(i) It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs). "Real estate business" means dealing in land and immovable property with a view to earning profit there from and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent/ income on lease of the property, not amounting to transfer, will not amount to real estate business.

(ii) Condition of lock-in period at (A) above will not apply to Hotels & Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.

(iii) Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.

(iv) It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.

(v) "Transfer", in relation to FDI policy on the sector, includes— (a) the sale, exchange or relinquishment of the asset; or (b) the extinguishment of any rights therein; or (c) the compulsory acquisition thereof under any law; or Consolidated FDI Policy 2020 Department for Promotion of Industry and Internal Trade 45 (d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of property Act, 1882 (4 of 1882); or (e) any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

(vi) Notwithstanding anything contained in Para 5.2.10 above, it is clarified that real-estate broking service does not amount to real estate business and 100% foreign investment is allowed in the activity under automatic route.

5.2.11 INDUSTRIAL PARKS

Table of FDI Caps and Entry Routes by Sector [...]

5.2.11.1 Other conditions for investment in Industrial Parks are at Annexure-7.

5.2.12 SATELLITES- ESTABLISHMENT AND OPERATION

Table of FDI Caps and Entry Routes by Sector [...]

5.2.13 PRIVATE SECURITY AGENCIES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.13.1 OTHER CONDITIONS

(1) FDI in Private Security Agencies is subject to compliance with Private Security Agencies (Regulation) (PSAR) Act, 2005, as amended from time to time.

(2) For the purposes of FDI policy on the sector, terms "Private Security Agencies", "Private Security" and "Armoured Car Service" will have the same meaning as provided under PSAR Act, 2005, which is reproduced as under: "Private Security Agency" means a person or body of persons other than a government agency, department or organisation engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property; "Private Security" means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service; "Armoured Car Service" means the service provided by deployment of armed guards along with armoured car and such other related services which may be notified by the Central Government or as the case may be, the State Government from time to time.

5.2.14 TELECOM SERVICES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.14.1 OTHER CONDITION

FDI in Telecom sector is subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except "Other Service Providers", which are allowed 100% FDI on the automatic route.

5.2.15 TRADING

5.2.15.1 Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)

Table of FDI Caps and Entry Routes by Sector [...]

5.2.15.1.1 DEFINITION

Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, imply sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.

5.2.15.1.2 GUIDELINES FOR CASH & CARRY WHOLESALE TRADING/WHOLESALE TRADING (WT):

- (a) For undertaking WT, requisite licenses/registration/ permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.
- (b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities: (I) Entities holding applicable tax registration; or (II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or (III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or (IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self-consumption.
Note: An entity, to whom WT is made, may fulfill any one of the 4 conditions at (b) (I) to (IV) above.
- (c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.
- (d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture.
- e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.
- (f) A wholesale/cash & carry trader can undertake retail trading, subject to the conditions as applicable. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms.

5.2.15.2 E-COMMERCE ACTIVITIES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.15.2.1

Subject to provisions of FDI Policy, e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.

5.2.15.2.2 DEFINITIONS:

- i) E-commerce- E-commerce means buying and selling of goods and services including digital products over digital & electronic network.
- ii) E-commerce entity- E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.
- iii) Inventory based model of e-commerce- Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.
- iv) Marketplace based model of e-commerce- Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

5.2.15.2.3 GUIDELINES FOR FOREIGN DIRECT INVESTMENT ON E-COMMERCE SECTOR

- i) 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- ii) FDI is not permitted in inventory-based model of e-commerce.

5.2.15.2.4 OTHER CONDITIONS

- i) Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.
- ii) Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on

its platform on B2B basis.

- iii) E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- iv) E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold. Such an ownership or control over the inventory will render the business into inventory-based model. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies.
- v) An entity having equity participation by e-commerce marketplace entity or its group companies, or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.
- vi) In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- vii) In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- viii) In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- ix) E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non-discriminatory manner. Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/ marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.
- x) Guidelines on cash and carry wholesale trading as given in para 5.2.15.1.2 above will apply on B2B e-commerce.
- xi) e-commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only.
- xii) E-commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by 30th of September every year for the preceding financial year confirming compliance of the e-commerce guidelines.

Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

5.2.15.3 SINGLE BRAND PRODUCT RETAIL TRADING

Table of FDI Caps and Entry Routes by Sector [...]

- (1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.
- (2) FDI in Single Brand product retail trading would be subject to the following conditions: (a) Products to be sold should be of a 'Single Brand' only (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India. (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing. (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, either directly by the brand owner or through a legally tenable agreement executed between the Indian entity undertaking single brand retail trading and the brand owner. (e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods procured, beginning 1st April of the year of the commencement of SBRT business (i.e. opening of the first store or start of online retail, whichever is earlier). Thereafter, SBRT entity shall be required to meet the 30% local sourcing norms on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of foreign investment for the purpose of carrying out single-brand product retail trading. (f) For the purpose of meeting local sourcing requirement laid down at para (e) above, all procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing irrespective

from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. SBRT entity is also permitted to set off sourcing of goods from India for global operations against the mandatory sourcing requirement of 30%. For this purpose, 'sourcing of goods from India for global operations' shall mean value of goods sourced from India for global operations for that single brand (in INR terms) in a particular financial year directly by the entity undertaking SBRT or its group companies (resident or non-resident), or indirectly by them through a third party under a legally tenable agreement. (g) An SBRT entity operating through brick and mortar stores can also undertake retail trading through e-commerce. However, retail trading through e-commerce can also be undertaken prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail. NOTE: (i) Conditions mentioned at Para 5.2.15.3 (2) (b) & 5.2.15.3 (2) (d) will not be applicable for undertaking SBRT of Indian brands. (ii) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens. (iii) Sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store or start of online retail, whichever is earlier for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of Para 5.2.15.3 (2) (e) will be applicable. A Committee under the Chairmanship of Secretary, DPIIT, with representatives from NITI Aayog, concerned Administrative Ministry and independent technical expert(s) on the subject will examine the claim of applicants on the issue of the products being in the nature of 'state-of-art' and 'cutting-edge' technology where local sourcing is not possible and give recommendations for such relaxation.

5.2.15.4 MULTI BRAND RETAIL TRADING

Table of FDI Caps and Entry Routes by Sector [...]

(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions: (i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded. (ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million. (iii) At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements. (iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US \$ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US \$ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. (v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors. (vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking. (vii) Government will have the first right to procurement of agricultural products. (viii) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department for Promotion of Industry and Internal Trade and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc. (ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi brand retail trading.

engaged in the activity of multi-brand retail trading.

(2) List of States/Union Territories as mentioned in Paragraph 5.2.15.4(1)(viii) 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh 6. Jammu & Kashmir 7. Karnataka 8. Maharashtra 9. Manipur 10. Rajasthan 11. Uttarakhand 12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

5.2.15.5 DUTY FREE SHOPS

Table of FDI Caps and Entry Routes by Sector [...]

5.2.16 RAILWAY INFRASTRUCTURE

Table of FDI Caps and Entry Routes by Sector [...]

NOTE: (i) Foreign Direct Investment in the abovementioned activities open to private sector participation including FDI is subject to sectoral guidelines of Ministry of Railways. (ii) Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.

5.2.17 ASSET RECONSTRUCTION COMPANIES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.17.2 OTHER CONDITIONS

- (i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.
- (ii) Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time. Similarly, investment by institutional / non-institutional investors will also be governed by the said Act, as amended from time to time.
- iii) The total shareholding of an individual FPI shall be below 10% of the total paid-up capital.
- (iv) FPIs can invest in the Security Receipts (SRs) issued by ARCs. /FPIs may be allowed to invest up to 100 per cent of each tranche in SRs issued by ARCs, subject to directions/guidelines of Reserve Bank of India. Such investment should be within the relevant regulatory cap as applicable.
- (v) All investments would be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time.

5.2.18 BANKING- PRIVATE SECTOR

Table of FDI Caps and Entry Routes by Sector [...]

5.2.18.2 OTHER CONDITIONS

- (1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by /FPIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.
- (2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid-up capital of the Bank. At all times, at least 26 per cent of the paid-up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.
- (3) The stipulations as above will be applicable to all investments in existing private sector banks also.
- (4) Other conditions in respect of permissible limits under portfolio investment schemes through stock exchanges for /FPIs and NRIs, setting-up of a subsidiary by foreign banks and limits in respect of voting rights are at Annexure-8.

5.2.19 BANKING- PUBLIC SECTOR

Table of FDI Caps and Entry Routes by Sector [...]

5.2.20 CREDIT INFORMATION COMPANIES (CIC)

Table of FDI Caps and Entry Routes by Sector [...]

5.2.20.2 OTHER CONDITIONS

- (1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.
- (2) Foreign investment is permitted subject to regulatory clearance from RBI.
- (3) Such /FPI investment would be permitted subject to the conditions that: (a) A single entity should directly or indirectly hold below 10% equity. (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and (c) /FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

5.2.21 INFRASTRUCTURE COMPANY IN THE SECURITIES MARKET

Table of FDI Caps and Entry Routes by Sector [...]

5.2.21.2 OTHER CONDITIONS

- (i) Foreign investment, including investment by FPIs, will be subject to the Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations 2012, and Securities and Exchange Board of India (Depositories and Participants) Regulations. 1996 as amended from time to

Exchange Board of India (Securities and Exchange Board), Regulations, 1992 as amended from time to time, and other Guidelines/Regulations issued by the Central Government, SEBI and the Reserve Bank of India from time to time.

(ii) Words and expressions used herein and not defined in these regulations but defined in the Companies Act, 2013 (18 of 2013) or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) or in the concerned Regulations issued by SEBI shall have the same meanings respectively assigned to them in those Acts/ Regulations.

DEFINITIONS:

(1) Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.

(2) For the purposes of this chapter, (i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities. (ii) "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952 (iii) "Association" means any-body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative. (iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract. (v) "Commodity derivative" means, □ a contract for delivery of goods, which is not a ready delivery contract; or □ a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with SEBI by the Central Government, but does not include securities.

5.2.22 INSURANCE

Table of FDI Caps and Entry Routes by Sector [...]

5.2.22.3 OTHER CONDITIONS

(a) No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine percent of the paid-up equity capital of such Indian Insurance company.

(b) The foreign investment up to forty-nine percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.

(c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license /approval from the Insurance Regulatory & Development Authority of India for undertaking insurance and related activities.

(d) An Indian Insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services/ Insurance Regulatory and Development Authority of India as per the rules/regulation issued by them from time to time.

(e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in Chapter-IV, Rule 10 and 11 read with Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019.

(f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.

(g) The foreign equity investment cap of 100 percent shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. However, the condition of Indian owned and controlled, as specified in Clause (d) above, shall not be applicable to Intermediaries and Insurance Intermediaries and composition of the Board of Directors and key management persons shall be as specified by the concerned regulators from time to time.

(h) The foreign direct investment proposals shall be allowed under the automatic route subject to verification by the Authority and the foreign investment in intermediaries or insurance intermediaries shall be governed by the same terms as provided under rules 7 and 8 of the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time: Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the

revenues of such entities from their primary (i.e., non-insurance related) business must remain above 50 percent of their total revenues in any financial year.

(i) The insurance intermediary that has majority shareholding of foreign investors shall undertake the following: i. be incorporated as a limited company under the provisions of the Companies Act, 2013; ii. at least one from among the Chairman of the Board of Directors or the Chief Executive Officer or Principal Officer or Managing Director of the insurance intermediary shall be a resident Indian citizen; iii. shall take prior permission of the Authority for repatriating dividend; iv. shall bring in the latest technological, managerial and other skills; v. shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority; vi. shall make disclosures in the formats to be specified by the Authority of all payments made to its group or promoter or subsidiary or interconnected or associate entities; vii. composition of the Board of Directors and key management persons shall be as specified by the concerned regulators; (j) The provisions of paragraphs (i) (b) and (d) of Annexure 8 relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.

(k) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015 issued by Department of Financial Services and regulations issued by Insurance Regulatory and Development Authority of India from time to time.

5.2.23 PENSION SECTOR

Table of FDI Caps and Entry Routes by Sector [...]

OTHER CONDITIONS

(i) Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.

(ii) Foreign Investment in Pension Funds will be subject to the condition that entities bringing in foreign equity investment as per Section 24 of the PFRDA Act shall obtain necessary registration from the Pension Fund Regulatory and Development Authority and comply with other requirements as per the PFRDA Act, 2013 and Rules and Regulations framed under it for so participating in Pension Fund Management activities in India.

(iii) An Indian pension fund shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by the Government of India/PFRDA as per the rules/regulation issued by them from time to time.

5.2.24 POWER EXCHANGES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.24.2 OTHER CONDITIONS

(i) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and

(ii) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/regulations; security and other conditionalities.

5.2.25 WHITE LABEL ATM OPERATIONS

Table of FDI Caps and Entry Routes by Sector [...]

OTHER CONDITIONS

(i) Any non-bank entity intending to set up WLAs should have a minimum net worth of Rs. 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times.

(ii) In case the entity is also engaged in any 'Other Financial Services' as laid down at Para 5.2.26 below, then the foreign investment in the company setting up WLA, shall also have to comply with the minimum capitalization norms, if any, for foreign investments in such 'Other Financial Services'.

(iii) FDI in the WLAO will be subject to the specific criteria and guidelines issued by RBI vide Circular No. DPSS.CO.PD.No. 2298/02.10.002/2011-2012, as amended from time to time.

5.2.26 OTHER FINANCIAL SERVICES

Table of FDI Caps and Entry Routes by Sector [...]

5.2.26.2 OTHER CONDITIONS

i. Foreign investment in 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/Government Agency.

ii. 'Other Financial Services' activities need to be regulated by one of the Financial Sector Regulators. In all such financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route subject to conditions including minimum capitalization as may be decided by the Government.

- iii. Any activity which is specifically regulated by an Act, the foreign investment limits will be restricted to those levels/limit that may be specified in that Act, if so mentioned.
- iv. Downstream investments by any of these entities engaged in "Other Financial Services" will be subject to the extant sectoral regulations and provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time.

5.2.27 PHARMACEUTICALS

Table of FDI Caps and Entry Routes by Sector [...]

5.2.27.3 OTHER CONDITIONS

- (i) 'Non-compete' clause would not be allowed in automatic or government approval route except in special circumstances with the approval of the Government.
- (ii) The prospective investor and the prospective investee are required to provide a certificate along with the application for foreign investment as per Annexure-9.
- (iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.
- (iv) FDI in brownfield pharmaceuticals, under both automatic and government approval routes, is further subject to compliance of following conditions: (a) The production level of National List of Essential Medicines (NLEM) drugs and/or consumables and their supply to the domestic market at the time of induction of FDI, being maintained over the next five years at an absolute quantitative level. The benchmark for this level would be decided with reference to the level of production of NLEM drugs and/or consumables in the three financial years, immediately preceding the year of induction of FDI. Of these, the highest level of production in any of these three years would be taken as the level. (b) R&D expenses being maintained in value terms for 5 years at an absolute quantitative level at the time of induction of FDI. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years immediately preceding the year of induction of FDI. (c) The administrative Ministry will be provided complete information pertaining to the transfer of technology, if any, along with induction of foreign investment into the investee company. (d) The administrative Ministry (s) i.e. Ministry of Health and Family Welfare, Department of Pharmaceuticals or any other regulatory Agency/Development as notified by Central Government from time to time, will monitor the compliance of conditionalities.

NOTE: i. FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. The above mentioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry. ii. Medical device means - (a) any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of - (i) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder; (ii) diagnosis, monitoring, treatment, alleviation or assistance for, any injury or disability; (iii) investigation, replacement or modification or support of the anatomy or of a physiological process; (iv) supporting or sustaining life; (v) disinfection of medical devices; (vi) control of conception, (vii) and which does not achieve primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means; (b) an accessory to such an instrument, apparatus, appliance, material or other article; (c) in-vitro diagnostic device which is a reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system, whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of examination of specimens derived from the human bodies or animals.

Annexure-1 Types of Instruments [...]

Annexure-2 Provisions Relating to Issue/ Transfer of Shares [...]

Annexure-3 Specific Conditions in Certain Cases [...]

Annexure-4 Total Foreign Investment i.e. Direct and Indirect Foreign Investment in eligible Indian entities

1.

Investment in an eligible Indian entity can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment i.e. through multi-layered structure.

1.1

For the purpose of computation of indirect foreign investment in an Indian company, foreign investment in an Indian company shall include all types of foreign investments i.e. FDI; investment by , FPIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Debentures (FCCBs); Investment Vehicles fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures or units of an Investment Vehicle, regardless of whether the said investments have been made under Schedule I, II, , III, VI, IX and X of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

1.2 Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment

(i) Counting of direct foreign investment

All investment directly by a non-resident entity into the Indian company/ LLP would be counted towards foreign investment.

(ii) Counting of indirect foreign investment

(a) The foreign investment through the investing Indian company/LLP would not be considered for calculation of the indirect foreign investment in case of Indian companies/LLPs which are 'owned and controlled' by resident Indian citizens and/or Indian Companies/LLPs which are owned and controlled by resident Indian citizens.

(aa) Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the principal Regulations as defined in RBI Notification No.362/2015-RB dated February 15, 2016. Provided that for sponsors or managers or investment managers organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

(b) For cases where condition (a) above is not satisfied or if the investing company is owned or controlled by 'non-resident entities', the entire investment by the investing company/LLP into the subject Indian Company would be considered as indirect foreign investment, provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/investing company. This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

Illustration

To illustrate, if the indirect foreign investment is being calculated for Company X which has investment through an investing Company Y having foreign investment, the following would be the method of calculation:

(A) where Company Y has foreign investment less than 50%- Company X would not be taken as having any indirect foreign investment through Company Y.

(B) where Company Y has foreign investment of say 75% and: (I) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X; (II) invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%; (III) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company X would be computed in the ratio of 75:25 in the total investment of Company Y in Company X.

(iii) The total foreign investment would be the sum total of direct and indirect foreign investment

(iv) The above methodology of calculation would apply at every stage of investment in Indian companies and thus to each and every Indian company.

(v) Additional conditions

(a) The full details about the foreign investment including ownership details etc. in Indian company(s) and information about the control of the company(s) would be furnished by the Company(s) to the

Government of India at the time of seeking approval.

(b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any inter-se agreements between/amongst shareholders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such inter-se agreements for determining ownership and control when considering the case for approval of foreign investment.

(c) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.

(d) In the I & B sector where the sectoral cap is up to 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

(A) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956 or Section 2 (72) of the Companies Act, 2013, as the case may be. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following: (I) In the case of an individual shareholder, (aa) The individual shareholder, (bb) A relative of the shareholder within the meaning of Section 2 (77) of Companies Act, 2013. (cc) A company/group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest. (II) In the case of an Indian company, (aa) The Indian company (bb) A group of Indian companies under the same management and ownership control.

(B) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 2 (77) of Companies Act, 2013/ HUF, either singly or in combination holding at least 51% of the shares.

(C) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (I) and (II) of clause 1.2(v)(d)(A) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

(e) If a declaration is made by persons as per section 187C of the Companies Act, 1956 or section 89 of the Companies Act, 2013, as the case may be about a beneficial interest being held by a non-resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

1.3

The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the Insurance Sector which will continue to be governed by the relevant Regulation. Similarly, above methodology will also not apply to downstream investments by an Investment Vehicle. Relevant conditions of downstream investment by Investment Vehicles are as under:

(i) Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the principal Regulations as defined in RBI Notification No. 362/2015-RB dated February 15, 2016. Provided that for sponsors or managers or investment managers organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

Explanation 1: Ownership and control is clearly determined as per the extant FDI policy. AIF is a pooled investment vehicle. 'Control' of the AIF should be in the hands of 'sponsors' and 'managers/investment managers', with the general exclusion of others. In case the 'sponsors' and 'managers/investment managers' of the AIF are individuals, for the treatment of downstream investment by such AIF as domestic, 'sponsors' and 'managers/investment managers' should be resident Indian citizens

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(ii) Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy.

(iii) Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule VIII of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 as well as the extant FDI policy for foreign investment in LLPs.

(iv) An Alternative Investment Fund Category III with foreign investment shall make portfolio investment

(iv) An Alternative Investment Fund and Category II fund with foreign investment shall make portfolio investment in only those securities or instruments in which a Registered Foreign Portfolio Investor is allowed to invest under the principal Regulations.

(v) The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time.

1.4 Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 (date of issue of Press Note 2 of 2009) would not require any modification to conform to these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

Annexure-5 Annexure-5

1. Remittance and Repatriation [...]

2. Reporting of FDI

The reporting requirements for any investment in India by a person resident in India under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 are specified by the RBI. Regulation 4 of the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 vide notification No. FEMA. 395/2019-RB dated 17.10.2019 issued by the RBI stipulates the reporting requirement for any investment in India by a person resident outside India. All the reporting is required to be done through the Single Master Form (SMF) available on the Foreign Investment Reporting and Management System (FIRMS) platform at <https://firms.rbi.org.in>. The user manual for reporting is available at <https://firms.rbi.org.in/firms/faces/pages/login.xhtml>. The format of the SMF and KYC report is available in the user manual.

3. Adherence to Guidelines/Orders and Consequences of Violation

FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the FEMA and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. The Directorate takes up investigation in any contravention of FEMA

3.1 Penalties

(i) If a person violates/contravenes any FDI Regulations, by way of breach/nonadherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/ Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

(ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means anybody corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

(iii) Any Adjudicating Authority adjudging any contraventions under 3.1(i) above, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

3.2 Adjudication and Appeals

(i) For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

(ii) The Central Government may appoint as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, an Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.

3.3 Compounding Proceedings

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person. No

contravention shall be compounded unless the amount involved in such contravention is quantifiable. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously and not later than 180 days from the date of application made to the Compounding Authority. Compounding Authority shall issue order specifying the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contraventions

Annexure-6 Conditions for Broadcasting Sector [...]

Annexure-7 Conditions for Industrial Parks [...]

Annexure-8 Permissible limits under portfolio investment schemes through stock exchanges for /FPIs and NRIs [...]

Annexure - 9 Certificate to be furnished by the Prospective Investor as well as the Prospective Recipient Entity [...]