

**CHAPTER**

**5**

# **FORGEIN DIRECT INVESTMENT – REGULATION & POLICY**

## **Covering-**

- Introduction
- Foreign direct investment in India
- General conditions on FDI
- Permitted Sectors
- Reporting of inflow
- FDI in E-Commerce Activities
- Other Conditions on investment
- FDI Prohibited Sectors
- Reporting of issue of shares
- Export of goods and services
- Advance Your Knowledge
- Self Test Questions

**EXPECTED  
MARKS COVERAGE  
(15 to 20)**

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# FOREIGN DIRECT INVESTMENT – REGULATION AND POLICY

## INTRODUCTION

To promote Foreign Direct Investment (FDI), the Government has put in place **an investor-friendly policy**, wherein **except for a small negative list, *most sectors are open for 100% FDI under the Automatic route.*** Further, the policy on FDI is reviewed on an ongoing basis, to ensure that India remains attractive & investor friendly destination.

## FOREIGN DIRECT INVESTMENTS IN INDIA

### FOREIGN DIRECT INVESTMENT POLICY 2016

#### INTENT AND OBJECTIVE

In a globalized world today, India's growth story is intrinsically linked with the story of both Indian entrepreneurship and Foreign Direct Investment (FDI). **The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible.** This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum.

**The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI** through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the **Foreign Exchange Management (Non-Debt Instruments) Rules, 2019** under the Foreign Exchange Management Act, 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 FEMA Notification will prevail.**

## GENERAL CONDITIONS ON FDI

### WHO CAN INVEST IN INDIA?

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 and atomic energy and sectors/activities prohibited for foreign investment.**

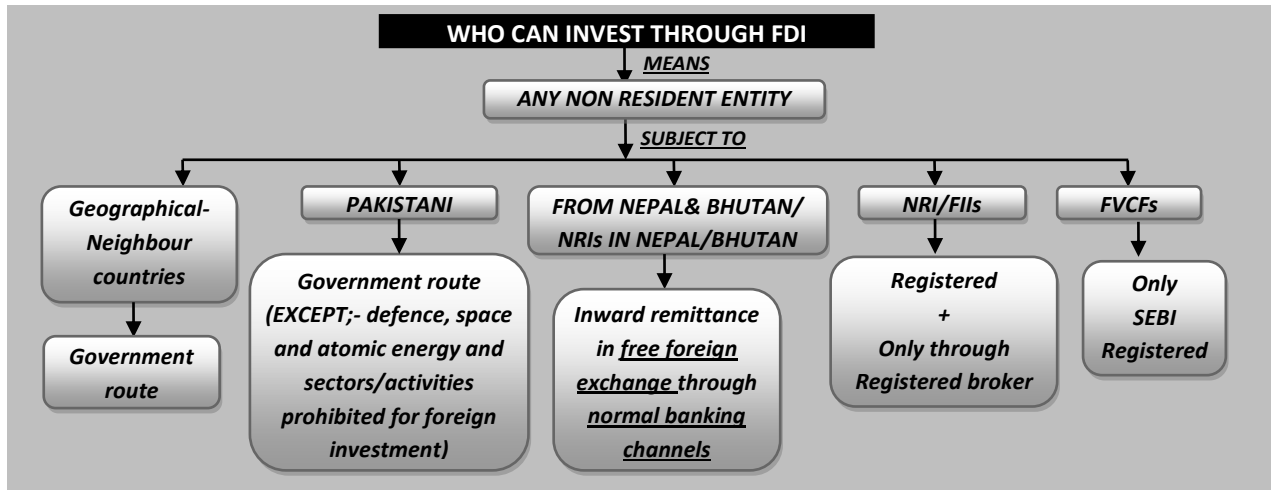
**NRIs resident in Nepal and Bhutan** as well as **citizens of Nepal and Bhutan** are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of **inward remittance in free foreign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

Only **registered FIIs and NRIs** as per **Foreign Exchange Management (Non-Debt Instruments) Rules, 2019,** can invest/trade through a **registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.** A **SEBI registered Foreign Venture Capital Investor (FVCI)** can also invest.

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## ENTITIES INTO WHICH FDI CAN BE MADE

### 1. FDI in an Indian Company

Indian companies can issue capital against FDI.

### 2. FDI in Partnership Firm/Proprietary Concern

(i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India 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.

### 3. FDI in Venture Capital Fund (VCF) / investment vehicle.

FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs)/Venture Capital Funds (VCFs)/other companies. An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI is permitted to receive foreign investment from a person resident outside India

### 4. FDI in Trusts

FDI in Trusts other than VCF is not permitted.

### 5. FDI in Limited Liability Partnerships (LLPs)

FDI in LLPs is permitted, subject to the following conditions:-

(a) FDI will be allowed, through the Government approval route, *only in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route.*

(b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

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

### 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..

### 7. FDI in other Entities

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

## TYPES OF INSTRUMENTS FOR INVESTMENT



Indian companies can issue **equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares** subject to pricing guidelines/valuation norms prescribed under FEMA Regulations.

The **price/conversion formula** of convertible capital instruments should be determined **upfront at the time of issue of the instruments.** The price at the time of **conversion should not in any case be lower than the**

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**fair value worked out**, at the time of issuance of such instruments, in accordance with the extant FEMA regulations [as per any *internationally accepted pricing methodology on arm's length basis* for the **unlisted companies** and *valuation in terms of SEBI(ICDR) Regulations*, for the **listed companies**].

## **ISSUE/TRANSFER OF SHARES**

The **capital instruments should be issued within 180 days from the date of receipt of the inward remittance** received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the NRE/FCNR (B) account of the non-resident investor.

In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so **received should be refunded immediately to the non-resident investor** by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be.

Non-compliance with the above provision would be reckoned as a **contravention under FEMA and would attract penal provisions**.

## **ISSUE PRICE OF SHARES**

Price of shares issued to persons resident outside India **under the FDI Policy, shall not be less than–**

- |   |
|---|
| (a) the price worked out in accordance with the <b>SEBI guidelines</b> , as applicable, where the shares of the company are <b>listed</b> on any recognised stock exchange in India;  |
| (b) the <b>fair valuation of shares</b> done by a <b>SEBI registered Merchant Banker</b> or a <b>Chartered Accountant</b> as per any <i>internationally accepted pricing methodology on arm's length basis</i> , where the shares of the company are <b>not listed</b> on any recognised stock exchange in India; and |
| (c) the price as applicable to <b>transfer of shares from resident to non-resident</b> as per the pricing guidelines laid down by the <b>Reserve Bank</b> from time to time, where the issue of shares is on <b>preferential allotment</b> .  |

*However*, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the **Companies Act**, as applicable, **by way of subscription to its Memorandum of Association**, such investments may be made at **face value** subject to their eligibility to invest under the FDI scheme.

## **TRANSFER OF SHARES AND CONVERTIBLE DEBENTURES**

**Non-resident investors can also invest** in Indian companies by purchasing/acquiring existing shares from **Indian shareholders** or from other **non-resident shareholders**.

**General permission** has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

- |  |
|--|
| (a) A <u>person resident outside India</u> (other than NRI and erstwhile OCB) may transfer by way of <b>sale or gift</b> , the shares or convertible debentures to <u>any person resident outside India</u> (including NRIs).  |
| (b) <u>NRIs</u> may transfer by way of <b>sale or gift</b> the shares or convertible debentures held by them to <u>another NRI</u> .   |
| (c) A <u>person resident outside India</u> can transfer any security to a <u>person resident in India</u> by way of <b>gift</b> .  |
| (d) A <u>person resident outside India</u> can sell the shares and convertible debentures of an Indian company on a <b>recognized Stock Exchange in India</b> through a stock broker registered with stock exchange or a merchant banker registered with SEBI.                         |
| (e) A <b>person resident in India</b> can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber's shares), of an Indian company under <b>private arrangement</b> to a <u>person resident outside India</u> , subject to the applicable guidelines. |
| (f) General permission is also available for transfer of shares/convertible debentures, by way of <b>sale under private arrangement</b> by a <u>person resident outside India</u> to a <u>person resident in India</u> , subject to the applicable guidelines.                         |

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(h) The **Form FC-TRS** should be submitted to the AD Category-I Bank, **within 60 days** from the date of receipt of the amount of consideration. The onus of submission of the **Form FCTRS** within the given timeframe would be on the **transferor/transferee, resident in India**.

However, in cases where the NR investor, including an NRI, acquires shares on the **stock exchanges** under the FDI scheme, the **investee company** would have to file form FC-TRS with the AD Category-I bank.

### **ISSUE OF RIGHTS/BONUS SHARES**

FEMA provisions allow Indian companies to **freely issue Rights/Bonus shares to existing non-resident shareholders**, subject to adherence to **sectoral cap**, if any. However, such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, as applicable, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (in case of listed companies), etc.

The offer on right basis to the **persons resident outside India** shall be:

(a) in the case of shares of a company listed on a recognized stock exchange in India, **at a price as determined by the company**;

(b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is **not less than the price** at which the offer on right basis is **made to resident shareholders**.

### **ACQUISITION OF SHARES UNDER SCHEME OF MERGER/DEMERGER/AMALGAMATION**

Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent NCLT/court/government on the basis of the Scheme submitted by the companies undergoing merger/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a NCLT/court/government in India, **the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:**

(i) the percentage of shareholding of **persons resident outside India** in the transferee or new company does **not exceed the sectoral cap**, and

(ii) the transferor company or the transferee or the new company **is not engaged in activities which are prohibited under the FDI policy**.

### **ISSUE OF SHARES UNDER EMPLOYEES STOCK OPTION SCHEME (ESOPS)**

**Listed Indian companies** are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of **its joint venture or wholly owned subsidiary** abroad, who are resident outside India, **other than to the citizens of Pakistan**.

ESOPs can be issued to **citizens of Bangladesh** with the **prior approval of government**. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route.

Shares under ESOPs can be issued directly or through a Trust subject to the condition that:-

(a) The scheme has been drawn in terms of **relevant regulations issued by the SEBI**, and

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

(ii) **Unlisted companies** have to follow the provisions of the **Companies Act, as applicable**.

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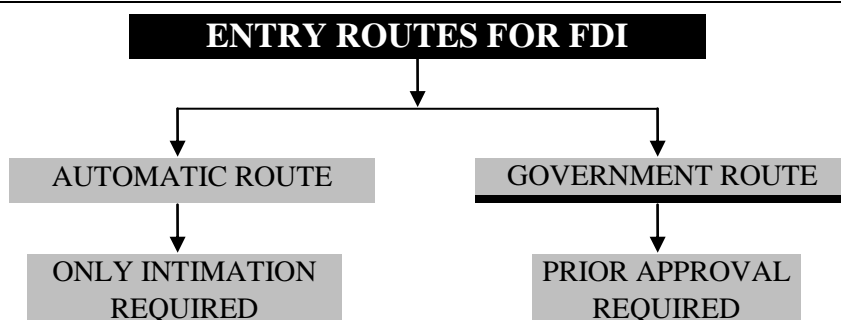
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## **ENTRY ROUTES FOR INVESTMENT**

Foreign Direct Investments (FDI) can be made under two routes:—

- (a) Automatic Route and  
(b) Government Route.



### **Automatic Route**

Under the Automatic Route, the foreign investor or the Indian company **does not require any approval** from the Reserve Bank or Government of India for the investment. **Only an intimation** is required to be given to RBI.

### **Government Route**

FDI in activities not covered under the automatic route requires **prior approval of the Government**. Proposals for foreign investment under Government route, are considered by respective **Administrative Ministry/Department**.

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**

### **Competent Authority**

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

S. No.	Activity/ sector	Administrative Ministry/ Department
1.	Mining	Ministry of Mines
2.	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 DIPP.	Department of Defence Production, Ministry of Defence.
	(b) Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.	Ministry of Home Affairs.
3.	Broadcasting	Ministry of Information & Broadcasting
4.	Print Media	
5.	Civil Aviation	Ministry of Civil Aviation
6.	Satellites	Department of Space
7.	Telecommunication	Department of Telecommunications

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8.	Private Security Agencies	Ministry of Home Affairs
9.	Applications involving investments from <i>Countries of Concern</i> which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time	
10.	Trading (Single brand, Multi brand and Food Product retail trading)	Department of Industrial Policy & Promotion
11.	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government	
12.	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)	
13.	Applications relating to issue of equity shares for preoperative/ pre-incorporation expenses (including payments of rent etc.)	Department of Economic Affairs
14.	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	
15.	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 Financial Services
16.	Banking (Public and Private)	
17.	Pharmaceuticals	Department of Pharmaceuticals

## PERMITTED SECTORS

### FDI Permitted in:

<i>Sector / Activity</i>	<i>% of Equity/FDI Cap</i>	<i>Entry Route</i>
Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions;	100%	Automatic
Development and Production of seeds and planting material;	100%	Automatic
Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture;	100%	Automatic
Services related to agro and allied sectors Note: Besides the above, FDI is not allowed in any other agricultural sector/activity	100%	Automatic
Tea sector including tea plantations	100%	Automatic
Coffee plantations	100%	Automatic
Rubber plantations	100%	Automatic
Cardamom plantations	100%	Automatic
Palm oil tree plantations	100%	Automatic
Olive oil tree plantations Note: Besides the above, FDI is not allowed in any other plantation sector/activity.	100%	Automatic

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Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973.	100%	Automatic
Setting up coal processing plants like was heries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).	100%	Automatic
Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded
Teleports (setting up of up-linking HUBs/Teleports);	100%	Automatic
Direct to Home (DTH);	100%	Automatic
Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);	100%	Automatic
Mobile TV;	100%	Automatic
Headend-in-the Sky Broadcasting Service(HITS)	100%	Automatic
Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	100%	Automatic

Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973.	100%	Automatic
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Teleports (setting up of up-linking HUBs/Teleports);	100%	Automatic
Direct to Home (DTH);	100%	Automatic
Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);	100%	Automatic
Mobile TV;	100%	Automatic
Headend-in-the Sky Broadcasting Service(HITS)	100%	Automatic
Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	100%	Automatic



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Terrestrial Broadcasting FM(FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
Up-linking of 'News & Current Affairs' TV Channels	49%	Government
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic
Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
Publication of facsimile edition of foreign newspapers	100%	Government
Airport (Greenfield projects)	100%	Automatic
Airport (Existing projects)	100%	Automatic
Automatic Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Non-Scheduled Air Transport Services	100%	Automatic
Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
Ground Handling Services subject to sectoral regulations and security clearance.	100%	Automatic
Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic
Industrial Parks -new and existing	100%	Automatic
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
Private Security Agencies	74%	Automatic up to 49% Government route beyond 49% and up to 74%

Terrestrial Broadcasting FM(FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
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Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic
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Publication of facsimile edition of foreign newspapers	100%	Government
Airport (Greenfield projects)	100%	Automatic
Airport (Existing projects)	100%	Automatic
Automatic Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Non-Scheduled Air Transport Services	100%	Automatic
Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
Ground Handling Services subject to sectoral regulations and security clearance.	100%	Automatic
Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic
Industrial Parks -new and existing	100%	Automatic
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
Private Security Agencies	74%	Automatic up to 49% Government route beyond 49% and up to 74%

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Telecom Services (including Telecom Infrastructure Providers Category-I) All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified License (Access Services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/ Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49% Government route beyond 49%
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
E-commerce activities	100%	Automatic
Single Brand product retail trading	100%	Automatic
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/ coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity's to main railway line and (x) Mass Rapid Transport Systems.	100%	Automatic
Asset Reconstruction Company	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government
Credit Information Companies	100%	Automatic
Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49%	Automatic
Insurance Company	74%	Automatic
Insurance Brokers	100%	Automatic
Third Party Administrators	100%	Automatic
Surveyors and Loss Assessors	100%	Automatic

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Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)	100%	Automatic
Pension Sector	49%	Automatic
Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	Automatic
White Label ATM Operations	100%	Automatic
Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
Pharmaceutical (Greenfield)	100%	Automatic
Pharmaceutical(Brownfield)	100%	Automatic up to 74% Government route beyond 74%

## FDI IN E-COMMERCE ACTIVITIES

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

E-commerce means *buying and selling of goods and services including digital products over digital & electronic network*.

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 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**.

**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**.

**Marketplace based model of e-commerce** means **providing of an information technology platform by an ecommerce entity on a digital & electronic network to act as a facilitator between buyer and seller**.

## OTHER CONDITIONS OF INVESTMENT

- |   |
|---|
| (a) 100% FDI under automatic route is permitted in <b>marketplace model of e-commerce</b> .   |
| (b) FDI is <b>not permitted</b> in <i>inventory based model of e-commerce</i> .   |
| (c) <b>Digital &amp; electronic network</b> will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc. |
| (d) <b>Market place e-commerce entity</b> will be permitted to <b>enter into transactions</b> with sellers registered on its platform on B2B basis.   |

## FDI-PROHIBITED SECTORS

FDI is prohibited in:-

- |  |
|--|
| 1. Lottery Business including Government/private lottery, online lotteries, etc. |
| 2. Gambling and Betting including casinos etc.                                   |
| 3. Chit funds  |
| 4. Nidhi company   |

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5. Trading in Transferable Development Rights (TDRs)
6. Real Estate Business or Construction of Farm Houses
7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
8. Activities/sectors not open to private sector investment

### **REPORTING OF INFLOW**

- (i) **An Indian company receiving investment** from outside India *for issuing shares/convertible debentures/preference shares under the FDI Scheme*, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank **not later than 30 days from the date of receipt** in the **Advance Reporting Form**.
- (ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category-I bank, **together with a copy evidencing the receipt of the remittance** along with the **KYC report on the non-resident** investor from the overseas bank remitting the amount.

### **REPORTING OF ISSUE OF SHARES**

- (i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file **Form FC-GPR, not later than 30 days from the date of issue of shares**.
- (ii) Form FC-GPR has to be duly filled up and **signed by Managing Director/Director/Secretary** of the Company and submitted to the Authorized Dealer of the company, who will forward into the Reserve Bank.

#### **The following documents have to be submitted along with the form:**

- (a) **A certificate from the Company Secretary of the company certifying that:**

(A) all the requirements of the Companies Act, as applicable, have been complied with;
(B) terms and conditions of the Government's approval, if any, have been complied with;
(C) the company is eligible to issue shares under these Regulations; and
(D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

Note: For companies with paid up capital with less than ₹5 crore, the above mentioned certificate can be given by a **practicing company secretary**.

- (b) A certificate from SEBI registered Merchant Banker or Chartered Accountant **indicating the manner of arriving at the price of the shares** issued to the persons resident outside India.
- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Note: An Indian company issuing **partly paid equity shares** shall file a report in form FC-GPR to **the extent they become paid up**.

- (d) **Annual return on Foreign Liabilities and Assets** should be filed on an annual basis by the **Indian company, directly with the Reserve Bank**. This is an annual return to be submitted **by 15th of July every year**, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years.

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- (e) Issue of bonus/ rights shares or stock options to persons resident outside India directly or on amalgamation/ merger/ demerger with an existing Indian company, as well as issue of shares on conversion of ECB/royalty/ lumpsum technical know-how fee/ import of capital goods by units in SEZs, **has to be reported in Form FC-GPR.**

## **FOREIGN EXCHANGE MANAGEMENT (MODE OF PAYMENT AND REPORTING OF NON-DEBT INSTRUMENTS) (AMENDMENT) REGULATIONS, 2020**

### **SCHEDULE II (INVESTMENTS BY FOREIGN PORTFOLIO INVESTORS)**

#### **A. Mode of payment**

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

#### **B. Remittance of sale proceeds**

The **sale proceeds (net of taxes)** of equity instruments and units of REITs, InViTs and domestic mutual fund **may be remitted outside India** or credited to the foreign currency account or a SNRR account of the FPI.

### **SCHEDULE VIII (INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA IN AN INVESTMENT VEHICLE)**

#### **A. Mode of payment:**

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

#### **B. Remittance of sale/ maturity proceeds:**

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

## **REPORTING REQUIREMENTS**

The reporting requirement **for any Investment in India by a person resident outside India** shall be as follows:

- (1) **Form Foreign Currency-Gross Provisional Return (FC-GPR):** An *Indian Company* issuing equity instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, defined under the rules, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments.
- (2) **Annual Return on Foreign Liabilities and Assets (FLA):** An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, shall submit **form FLA** to the Reserve Bank on or before the **15th day of July** of each year.
- (3) **Form Foreign Currency-Transfer of Shares (FC-TRS):** Form **FCTRS** shall be filed **for transfer of equity instruments** in accordance with the rules, **between:**
  - i. a **person resident outside India** holding equity instruments in an Indian company on a repatriable basis and **person resident outside India** holding equity instruments on a non-repatriable basis; and

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- ii. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a **person resident in India**
- (4) **Form Employees' Stock Option (ESOP):** An Indian company issuing employees' stock option to persons resident outside India who are its employees/directors or employees/directors of its holding company/joint venture / wholly owned overseas subsidiary/subsidiaries shall file **Form-ESOP**, within **30 days from the date of issue of employees' stock option**.
- (5) **Form Depository Receipt Return (DRR):** The Domestic Custodian shall report in **Form DRR**, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 **within 30 days of close of the issue**.
- (6) **Form LLP (I):** A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), **within 30 days from the date of receipt of the amount of consideration**.
- (7) **Form InVI:** An Investment vehicle which has issued its units to a person resident outside India shall file **Form InVI within 30 days from the date of issue of units**.

## **FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019**

### **RESTRICTION ON INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA**

Regulations 3 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 states that save as **otherwise provided in the Foreign Exchange Management Act, or rules or regulations** made thereunder, **no person resident outside India** shall make any investment in India. It may be noted that here investment means *to subscribe, acquire, hold or transfer any debt instrument or unit* issued by a **person resident in India**.

*Provided that* an investment made in accordance with the Foreign Exchange Management **Act or the rules** or the **regulations** framed thereunder **and held on the date of commencement of Foreign Exchange Management (Debt Instruments) Regulations, 2019**, shall be deemed to have been made under the Regulations and shall accordingly be governed by the Regulations.

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

### **RESTRICTION ON RECEIVING INVESTMENT**

Regulations 4 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 provides that **save as otherwise provided in the Foreign Exchange Management Act or rules or regulations made thereunder**, **an Indian entity or a mutual fund, or a venture capital fund or a firm or an association of persons or a proprietary concern** shall not receive any investment in India from a person resident outside India or record such investment in its books.

Provided that the **Reserve Bank may**, on an application made to it and for sufficient reasons, **permit** an Indian entity or a mutual fund, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

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## **PURCHASE AND SALE OF DEBT INSTRUMENTS BY A PERSON RESIDENT OUTSIDE INDIA**

### **Permission to person's resident outside India**

#### **A. Permission to Foreign Portfolio Investors (FPIs)**

An FPI may purchase the following debt instruments on repatriation basis subject to the terms and conditions specified by the **Securities and Exchange Board of India** and the **Reserve Bank**:

(a) dated Government securities/ treasury bills;
(b) non-convertible debentures/ bonds issued by an Indian company;
(c) commercial papers issued by an Indian company;
(d) units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
(e) Security Receipts (SRs) issued by Asset Reconstruction Companies;
(f) debt instruments issued by banks, eligible for inclusion in regulatory capital;
(g) Credit enhanced bonds;
(h) Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;
(i) Securitised debt instruments, including any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s with banks, Financial Institutions or NBFCs as originators;
(j) Rupee denominated bonds/ units issued by Infrastructure Debt Funds;
(k) Municipal Bonds:

#### **B. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Repatriation basis**

(1) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit, purchase the following instruments on repatriation basis,

(a) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
(b) Bonds issued by a Public Sector Undertaking (PSU) in India;
(c) Bonds issued by Infrastructure Debt Funds;
(d) Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;

(2) An NRI or an OCI (overseas Citizen of India) may purchase on repatriation basis debt instruments **issued by banks**, eligible for inclusion in regulatory capital.

## **EXPORT OF GOODS AND SERVICES**

Export of goods and services is regulated by the provisions of **Sections 7 and 8 of FEMA, 1999** and **Foreign Exchange Management (Export of Goods and Services) Regulations, 2015**.

*Export includes the taking or sending out of India goods by land, sea or air, on consignment or by way of sale, lease, hire purchase or under any other arrangement by whatever name called.*

*In the case of software, export also includes transmission of any data through any electronic medium.*

**In general, all exports are free.**

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## **TIME LIMIT FOR REALISATION OF EXPORT VALUE OF GOODS/SOFTWARE**

The amount representing the full export value of goods or software exported is required to be realised and repatriated to India within **six months from the date of export**.

However in the following case the stipulation of period of realization and repatriation to India shall not apply:-

- |   |
|---|
| 1) In case of <b>star export houses</b> , export value can be realized <b>within 12 months</b> .  |
| 2) <b>Export oriented units</b> and units in FHTP/STP/BTP can realize and repatriate full value of exports proceeds <b>within 12 months from the date of export</b> . |
| 3) In the case of units <b>in SEZ</b> , there is <b>no time limit</b> for realization of export proceeds.   |

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

Lined area for writing the answer to Question No. 1.



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

Lined area for writing the answer to Question No. 2.