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2. FDI regulations & Policy

(5-10m)
(direct mostly)

#) **Imp points :-**

i) Foreign direct investment means investment by a person resident outside India into the equity instrument of an unlisted Indian company or in 10% or more of a listed Indian company.

ii) The calculation for FDI is done on fully diluted basis of the post issue capital.

Illustration:

Eq. cap	80000
Proposed Issue	20000
Compul. conver. debt.	20000
ESOP	10000
Deb.	10000.

∴ Cal. Post issue cap. on fully diluted basis.

↓

80000
20000
20000
10000

130000. ⟹ PIC on fully diluted basis

(say) foreigner holds 30000 sh.

∴ % ? ⟹ 23%

FDB = That o/s securities → would be arrived → If all options of conv. are exercised.

iii) Once ~~FDI~~ an investment is classified as FDI, it stays FDI even afterwards the investment falls below 10%.

Eligible Investors:-

Non-resident entity → can invest in Indian securities → in those sectors which are not prohibited.

↓

provided those countries sharing land border → can invest only through Govt route.

↓

Citizen/ Entity of Pakistan → can invest only through Govt. Route → Not in
- space
- defence
- Atomic energy.

↓

NRI → in Nepal/ Bhutan or citizen of Nepal/ Bhutan → can invest on repat basis.

Company / Trust / Partnership incorp. outside India & owned / control. by ~~NRI~~ NRI → Allowed.

↓

FPI / FVCI → Allowed.

↓

OCB → are no longer categorised as a separate class of investors

→ However they can invest in non-resident category.

OCB means → where NRI have → 60% or more holding.

Eligible Investee Entities :-

↓

Partnership / sole proprietor → A ~~person resident outside~~ non resident India

↓

invest in ~~India~~ firm / prop on non-repat basis

↓

Provided amt should be invested by inward remittance or through NRE / NRO / FCNR A/c

→ NRI → invest on repat basis but with prior approval of RBI.

_/_/__

(foreigner)
A person resident outside India → invest by app → $ & prior approval of RBI

None of above can invest in firm/prop. engaged in
- plantation/ agriculture
- real estate
- print media

Trust ~~Trus~~ ~~Trust by~~ A person ~~resi~~ resident outside India → not allowed ~~to~~ to invt. in Trusts.

except
- VCF (reg. & regu. by SEBI)
- &
- Invt vehicle (REIT, InVit)

LLP → A person resident outside India may invt in India Co. + LLP → (permissible only if) provided condition
- acti. is under automatic route
- 100% FDI ✓
- No performance linked ~~activities~~ conditions.

__/__/____

India Co & LLP → make ~~Invt in~~ downstream invt in other Co or LLP having above 3 conditions complied,

↓

Also, Co can be converted into LLP & vice versa → provided they have foreign invt with 100% FDI permitted under automatic route & no performance linked conditions are there.

↳ Any Indian Company ✓

↳ Investment vehicle → REIT / InvIT ✓

↳ Startup Co.

↓

Can issue
- equity
- debt
- conv. Notes

} Raise ~~Invst~~ Investment.

↓

Min Invt → ₹25L.

↓

If startup is under Govt Route
- → Approval of Govt before Acq.
- OR
- → Before transfer

↳ Invt shall be on non-repat basis.

__/__/__

↓

Investment can be made through → Banking Channel + → Debit ~~Note~~ to → NRE/NRO A/c.

↳ FDI in other entities is not allowed.

Entry routes for investment:

- Automatic route
- Approval Route
  - Govt
    - ↓ In the following sectors:
      - Where new entity is being set up by FDI ↓ which is not owned ~~and~~ or controlled ↓ By Indian citizen / citizens
      - Where an existing entity → Being owned & controlled by Indian citizen/ entity ↓ is being owned or controlled By a NR because of FDI.
  - RBI

_/_/_

Foreign Invt / downstream investment :-

i) Downstream invt. by an Indian entity which has foreign investment in it (it also includes an investment vehicle).

ii) The downstream investment shall be categorised as indirect foreign investment if the investing Indian company has received foreign investment and is not owned or controlled by resident Indian citizen or Indian entity. (same in case of an invt. vehicle which is not owned or controlled by Indian citizens or entities).

iii) Calculation of Total foreign investment:

a) Total foreign investment means FDI + indirect foreign investment.

b) Both non-resident & resident Indian entities can invest in eligible Indian entities where the investments by non-residents would be treated as FDI and when the investment is done by ~~Ind~~ Indian entity shall be treated as indirect foreign investment.

c) So, Every investment by an Indian entity which is not owned or controlled by Indian citizens / entities shall be treated as Indirect foreign investment.

d) While calculating foreign investment any investment made by an Indian owned & controlled entity will not be counted.

e) Further, ~~I~~ entire investment by an entity which is owned or controlled outside India shall be treated as Indirect foreign investment irrespective of the FDI in the investing Company.

__/__/__

f) The only exception to the above rule is when the investee company becomes a wholly owned subsidiary, in this case it becomes a mirror image of the investing company so that the foreign holding in the investing company & the indirect foreign investment in the investee co. would be same.

Imp point :-

a) Foreign investment in investing companies which are registered as NBFC's shall be under 100% automatic route except in case of CIC where it will come under govt. route.

b) If the downstream investment classifies as indirect foreign investment then the investing Co. has to comply with all the rules of foreign investment applicable to the investee Co. (Sectoral cap, entry route, etc)

c) Downstream investment to be reported to RBI in form DI within 30days of downstream invt. irrespective of whether securities have been allotted or not.

d) Downstream invt. shall be supported by a board resolution.

e) For the purpose of downstream investment, the funds should be brought from abroad and not from domestic market.

f) For proposals exceeding 5000 Crs, the same should be submitted to CCEA (Cabinet Committee on Economic Affairs)

__/__/__

Cases which do not require ~~[illegible]~~ fresh approval :-

- Entities → which earlier req → app of Govt & had obtained too for initial invt
  - ↓ But now
  - ↓ Place under automatic route -
- Entities having sectoral caps earlier + req prior app of govt + had obtained
  - Now, such cap (increased / removed) placed under automatic route.
  - Provided, addi invt doesn't exceed ~~new~~ sectoral caps.
- Addi FI → upto 5000 cr in same entity or WOS.

Prohibited Sectors :-

- Lottery Business
- Gambling / Betting → casinos ✓

↳ Chit funds
↳ Nidhi Co.
↳ Real Estate / Constn of farmhouse.
↳ not inclu
Township | road/ bridges | REITs | Constru of resi/ comm. premises.

↳ Manu. of cigarettes / tobacco or its substitutes
↳ Activities not open to pvt sector Eg: Atomic / Railway.
↳ Trading in Transferable Development Rights.

Mining :-

Mining & Exploration of non-metals & metals - gold / silver / diamond except titanium → 100% Automatic route.

+

Separation of titanium → 100% Automatic

+

Coal → 100% Automatic.

Agriculture & Animal Husbandry :-

Floriculture / Horticulture / under controlled conditions
+
deve + production of seeds & planting materials
+
Animal Husbandry
+
Services related to agro & allied sectors

} 100% Automatic Route.

Plantation :-

Tea "
Coffee plantation
Rubber " "
Cardamom "
Palm oil "
Olive oil

} 100% Automatic

Coal.

PETROLEUM AND NATURAL GAS. –

Exploration activities of oil, petrolium, pipelines, LNG, infrastructure, marketing of natural Gas — 100% (Automatic)

Petrolium refining by public sector undertaking (PSU) → 49% (Automatic)

DEFENCE –

license | Not Required

Not Required license → 100%
- upto 49% Automatic → within 30 days → declaration → ministry of defence
- Above 49% Govt Route

↓ transfer of stake to foreign investors

license ↓ 100% FDI
- upto 74% Automatic
- above 74% Govt Route

Date :

Note -

→ licence application to be considered by → DPIIT

→ investee co. → should be capable of → product design, manufacturing, life cycle support.

→ investment is subject to → National security clearence

BROADCASTING CARRIAGE SERVICE -

↓

Teleport
+
Direct to Home
+
Cable Network
+
Mobile Tv.
+
Headed in the sky

} 100% (automatic)

BROADCASTING CONTENT SERVICE -

↓

Terrestrial Broadcasting FM — 49%

New and current Affairs (TV — 49%

Digital media — 26%

Non-current news — 100%

} Government

Date :

CONDITIONS FOR BROADCASTING SECTOR —

1) All the foreign investment will be subject to rule and regulations as well as terms and conditions as specified by Ministry of information and Broadcasting.

2) Foreign Investment in aforesaid broadcasting carriage services will be subject to following security conditions / terms :

mandatory requirements of key executives :—

a) majority of Directors to be Indian Citizens

b) CEO / cheif of network operation to be Indian resident and citizen.

__/__/__

iii) Security clearance of Personnel:

a) All the directors / CEO / CFO / CTO / COO / CSO must be security cleared every 2 years.

b) Also, individual shareholders holding 10% or more ~~of~~ paid up capital would ~~be~~ required to security cleared.

c) The above requirement applies to those personnel which are being deployed for more than 60d. in a year.

Note → Further if security clearance is withdrawn then the permission granted is liable to be terminated & the licensee will ensure that the concerned person resigns, failing which the license of the company would be revoked & no new permission would be granted for a period of 5 yrs.

iv) Monitoring, Inspection & Submission of Information:

a) The company should have necessary hardware and software & adequate equipments for doing lawful interception & monitoring from a centralised location.

b) If the Govt or its authorised representative demands, then the Co. at its own cost has to provide necessary equipment at designated place for monitoring or supervision by the Govt.

c) The Govt of India or authorised representative or Ministry of Info & Broadcasting ~~[illegible]~~ has right to inspect the facilities ~~[illegible]~~. However, no notice is required to be given for same.

d) Generally, the authority gives the notice but If they believe that by providing the notice ~~the~~

it would defeat the provision, they may not give the notice.

v) National security angle:

a) The GOI & the Ministry of Info & Broadcasting can restrict the licensee from operating in any sensitive area from the national security angle

b) It may also suspend the permission temporarily in public interest.

c) If the Co. ~~does not~~ not comply with the directives/orders their license shall be subject to revocation & the Co. will be disqualified from applying for license for next period of 5 yrs.

Print Media:-

→ Route → Govt

News
- Indian newsp. → 26%
- Indian Edition of foreign entity → 26%
- foreign newsp. → fax version print → 100%

Non-news
- foreign sci. magazine → 100%

Air Transport Services:-

__/__/__

- Schedules Air Transport Service → 100% Auto.
  - 49% Auto.
  - beyond 49% Govt route.

- Non scheduled
- Helicopter + Seaplane

} 100% Automatic.

- Air Operator certificate will only be granted to a Co. if,

a) It is registered in India & has a place of business in India.

b) The Chairman & 2/3rd of the Board are citizen of India.

c) Ownership & control is vested with Indian national.

- Ground Handling Service + Maintenance/repair/flying training insti. & technical training institutions } 100% Auto.

Further foreign airlines can invest in Indian companies upto 49% of PUC. (This 49% includes FDI & FPI)

All foreign national shall be security cleared.

All technical equipment → imported in India shall require clearance from Ministry of Civil Aviation.

__/__/__

Construction development - Townships/Housing...

i) Construction development of ~~township~~ projects of townships, roads, bridges - 100% Automatic.

ii) The investment is subject to following conditions :-

a) There is a mandatory lock-in of 3 years for foreign investors.

b) The investor shall be permitted under automatic route to exit after completion of ~~order~~ project or trunk infrastructure.

c) The project shall conform to the norms stipulated by the authority.

d) The Indian investee would be ~~eligible~~ permitted to sell only developed plots.

e) Its the responsibility of the Ind. Investee Co. to obtain all the necessary approvals & sanctions.

f) The SG monitors the compliance of the above.

- Real Estate / developed projects - 100% FDI is permitted in completed projects for operation & management of township / malls / shopping complexes.

Industrial Parks :-

↳ new & existing - 100% Automatic route.

i) Industrial Park means a place in which infra. in the form of developed land is provided to the allottees for industrial activity.

ii) Industrial activity ~~means~~ includes manufacturing gas, electricity as well as water supply & further also includes consultancy, data processing & other

__/__/__

technical activity

iii) FDI would be allowed in Industrial park if it complies with following 2 conditions:

a) There should be a minimum of 10 units & no single unit shall occupy more than 50% of the area.

b) Of Total ~~area~~ of allocable area, atleast ~~60%~~ 66% shall be allocated for industrial activity.

E-commerce activities:-

↳ 100% → Automatic

Conditions:-

↳ FDI is allowed → B2B ✓

↳ not allowed in → B2C

↓

Two types of E-commerce entity

↗ market place.
↳ FDI ✓

↘ inventory → Not allowed.

→ FDI is allowed in market place e-commerce entity which is involved in B2B sales.

Other conditions:-

__/__/__

i) Permitted to do B2B transactions.
ii) They can provide support services to sellers like warehousing, payment collection, order fulfilment, call centre, etc.
iii) E-commerce entity shall not exercise ownership as well as control over the ~~inv~~ inventory; else the business would be considered inventory based.
~~iv)~~ Inventory of a vendor is deemed to be considered controlled if more than 25% of purchases of the vendor are from the market place entity or its group companies.
iv) For entities in which the e-commerce entity has equity control, shall not be allowed to sell at the platform.
v) The e-commerce entity should not influence the sale price of the goods & services & should provide level playing field to the sellers.
vi) They have to obtain a & report from statutory auditor regarding the compliance with all the e-commerce guidelines by 30th Sept. every year.
vii) It is the responsibility of the seller to look after the post ~~delivery~~ sales, delivery of goods, payment for sale or any guarantee/warranties of g/s sold.
viii) E-commerce entity shall not mandate any seller to sell any product only on its platform.

SBRT (Single brand product retail trading):

↳ 100% → Automatic.

__/__/__

Conditions :

i) Products in SBRT should be of a singer brand &
ii) should be sold under the same name internationally as well.

ii) The product should be branded at the time of manufacturing.

iii) A non-resident entity can directly start a business in India or can also start through a legally tenable agreement between the brand owner & the Ind entity.

iv) If the proposal of FDI is beyond 51% then atleast 30% of the sourcing should be done from India.

v) The above requirement is to met in the first instance as an average of 5yrs of procurement done by the entity. Thereafter, this requirement is checked on an annual basis.

MBRT :-

→ 51% → Govt.

Conditions :-

i) A Minimum invt of $100M has to be brought.

ii) Of this 100M USD atleast 50% shall be invested into back-end infrastructure within 3yrs. ~~the~~ Here, back-end does not include land cost of or rentals but includes all those things which are not front-end like quality control, designing of product, warehousing, logistics, etc.

iii) Agri produce, fish, fruits, vegetables, meat product, poultry, flowers, grains = ~~shd~~ may be unbranded.

iv) Atleast 30% of the procurement shall be sourced from MSMEs which have total invt in P/M not exceeding 2M USD.

v) Govt will have first right to procure agri. products.

Duty free shops:-
→ 100% automatic.

Satellites:
→ Manu. / operating + Sate. data products + Ground & user segment → 100% Automatic
- 74% ↓ Auto
- beyond 74% ↓ Govt route.

→ launch vehicle subsystem, creation of spaceports → 100% Automatic
- 49% ↓ Auto
- Beyond 49% ↓ Govt route.

→ Manu of system/subsystem/ ground segment → 100% Automatic.

__/__/__

Private sector agencies

↳ 74% → 49% Automatic
↳ Beyond - Govt.

Telecom Services

↳ 100% Automatic,

Trading

↳ 100% → Automatic

Railway Infrastructure :-

↓

Railway Infra. Construction, operation & maintenance of following:

- High Speed Train
- Freight ~~train~~ lines
- freight terminal
- Passenger terminal
- Mass Rapid Transport System
- Signalling system

} 100% Automatic.

Note → In case of sensitive areas, where invt. exceeds 49%, the proposal goes to the Cabinet Committee on Security through the Ministry of Railways.

ARC :-

↳ 100% Automatic.

Banking :-

public → 20% Govt

pvt → 74%

- 49% → Automatic
- beyond 49% → Govt.

Credit Info. Co :-

↓

100% Automatic.

Conditions

i) ~~FDI~~ & FPIs are allowed provided the holding should be below ~~does not~~ ~~exceed~~ 10% ; any invt in excess of 1% needs to be reported to RBI.

ii) Further, ~~FII~~ FPIs cannot seek representation on the board.

Infra. Co in securities markets:

↓

SE
Commodities exchange
depositories
Clearing corporations

} 49% Automatic

_/_/_

Insurance

- Insurance Co. → 74% Automatic.
- Intermediaries → 100% Automatic.

Conditions.

a) Foreign investment in the form of FDI & FPI in total shall not exceed 74%.

b) The foreign invt. in insurance Co. shall be subject to verification by ~~ERA~~ IRDAI.

c) The Indian insurance Company having foreign invt. shall have:

i) ~~Maj~~ majority of its directors / KMPs as Indian citizens & residents.

ii) Atleast one amongst the Chairperson / MD / CEO shall be resident Indian.

d) Pricing guidelines of RBI under FEMA has to be complied with.

e) The same conditions as above applies in case of insurance intermediaries provided the condition of Indian owned & controlled does not apply.

f) Where a bank also provides services of an insurance intermediary, then also the FDI cap of a banking sector will apply until the primary (i.e. banking business revenue) stays above 50% of their total revenue.

g) The insurance intermediaries having majority shareholding of foreign investors shall undertake the following.

__/__/__

i) It has to be incorporated as a limited Company.
ii) One of the following must be resident Indian citizen - CEO/ Chairman/ MD.
iii) Before remitting dividend they must take prior permission of authority.
iv) They should not make payment to the promoter or Subsidiaries beyond what is necessary or permitted by the Authority.
v) The composition of the board shall be as prescribed by the IRDAI.

LIC :

→ 20% Automatic

Pension sector :-

→ ~~100%~~ Automatic 49%

Power exchanges :-

→ 49% Automatic

White label ATM :-

→ 100% Automatic

→ provided Co. has 100 Cr NW at all times.

__/__/__

Other Financial services
↳ 100% Automatic.

Pharmaceuticals :-
↳ Greenfield → 100% Automatic

↳ Brownfield → 100% Automatic

74% Auto , Beyond 74% Govt.

Conditions

a) Non-compete clause will not be allowed both under automatic or Govt route.

b) The investor & investee are required to provide a certificate along with the application for foreign investments.

c) Following are the conditions for FDI in brown ~~field~~ field both under automatic & govt approval route.

i) The production of NLEM drugs shall be maintained at an absolute quantitative level for the next 5yrs, the benchmark for the above shall be the highest production in any of the preceding 3yrs prior to the induction of FDI.

ii) The ~~prod~~ R&D exp. shall be maintained at an absolute quantitative level for next 5yrs & the benchmark for above shall be the highest expense

__/__/____

in any of the preceding 3yrs, prior to induction of FDI.

d) Further, 100% FDI is allowed under both greenfield as well as brownfield projects for companies manufacturing medical devices.

e) Govt. may incorporate additional conditions in case of FDI in brownfield projects.

Types of instruments:-

a) An Indian company can issue the following instruments under the FEMA regulations

i) Equity shares

ii) Fully / compulsory & mandatorily convertible debentures.

iii) Fully / compulsorily & mandatorily convertible pref shares.

b) The price or conversion formula shall be determined upfront at the time of issue of instruments (The price at the time of conversion shall in no case be less than FMV).

c) A company can provide options / optionality clause while issuing its equity share, CCDs & CCPs which allows the holder to exit provided the foll. conditions are complied with:

i) There shall be min. lock-in of 1 year from allotment.

ii) If after lock-in the NR wants to exit than he shall be allowed to provided without any assured returns.

__/__/__

d) Apart from that, foreign investments can also be raised through non-convertible & optionally ~~convert~~ convertible pref. sh / debentures.

e) Inward remittance through DRs & FCCBs shall be treated towards FDI.

f) Issue of FCCBs & DRs:

i) DRs are denominated in foreign currency issued by foreign depository on behalf of an Indian company against its equity shares.

ii) Any person who is eligible to issue instruments outside India shall be eligible to issue DRs.

iii) The aggregate limit of DRs cannot exceed the sectoral cap set under FEMA for that company.

iv) The pricing of the DR should not be at a price less than the price at which it is being sold in the domestic market.

g) Schemes & types of DRs:

- Two-way fungibility scheme: A two way fungibility scheme is which allows ADR/GDRs to be converted back into equity shares & which can be reconverted into ADR/GDR. So, a SEBI registered broker may acquire shares from the market & convert them into ADR/GDR based on the instructions recd. from ~~of~~ overseas investors. This can further be redeemed & sold ~~into mart~~ in Indian market.

- Sponsored ADR/GDR: Indian Co. can sponsor an ADR/GDR issue in which it can issue fresh securities or can offer to its resident shareholders to submit their share to the Co. & issue those shares abroad & distribute ~~among~~ amongst

_/_/_

the investor the proceeds.

Note :- Indian Co. can issue warrants as well as partly paid shares.

Provision relating to issue / transfer of shares:

i) The capital instrument must be issued within 60 days from the receipt of inward remittance.
Failing which the consideration shall be refunded within 15 days.

ii) The issue price of the shares shall not be less than :

a) In case of Listed Co. - the price at which it is being sold in the market.

b) In case of unlisted Co. - FMV.

c) In case of preferential allotment - the pricing guidelines as issued by RBI.

iii) The Indian Co. can retain this amt. in their foreign currency A/c.

iv) Transfer of shares & convertible deb :-

a) A non-resident (other than NRI) may transfer sh./deb to other non-resident, NRI or resident by way of sale or gift provided it complies with sectoral caps.

b) NRIs may transfer its sh/deb to other NRI or Resident by way of sale or gift subject to sectoral caps under FEMA.

c) A resident individual can transfer his sh/deb to NRI / resident / non-resident by way of sale* provided it complies with the sectoral caps.

__/__/__

iv) However, form FC-TRS has to be filed with AD Cat I bank within 60 days from date of transfer or remittance fund, whichever is earlier.

v) Any person resident outside India who has acquired shares under SAST Regulations of any listed company provided it is in line with FEMA regulations.

vi) For the above purpose an escrow A/c can be opened by the NR.

vii) In case of transfer b/w a resident and NR or vice versa, ~~no~~ payment should be upfront. However, in any case, not more than 25% should be on deferred basis which has to be repaid within 18m.

turrant pain pay

viii) Prior permission of RBI in case of transfer of capital instrument:-

a) When the transfer of capital instrument from resident to non-resident by way of sale is at a price which is outside the pricing guidelines or where the deferment of payment is not in line with the stipulated one. (if approval is granted FC-TRS is to be filed within 60d from the receipt of full consideration).

b) In case of gift by a person resident in India to a non-resident, the following guidelines must be complied with:

1) The gift should not exceed more than 50000 USD
2) The donor and donee are close relatives.
3) The donee is eligible to hold the capital instrument.
4) The sectoral cap is not breached.

__/__/____

e) The gift does not exceed the 5% of paid up capital of the company.

ix) Conversion of ECB /lump sum fee/ Royalty → Equity:

a) Conversion of ECB into equity is permissible provided the following conditions are complied:

1) The conversion will happen only at the lender's consent & at no extra cost.

2) The activity of the company is either automatic route or under govt. route (in which case govt. approval is taken).

3) The conversion should not result into breach of sector cap.

4) Any ECB whether it is secured/ unsecured/ due or not due can be converted.

5) FDI (pref sh/equity sh) can be issued for payment of technical know-how, royalty due provided they comply with pricing guidelines, sectoral caps and tax laws.

6) Further, issue of equity sh/ pref sh against any other fund payable is permitted subject to pricing guidelines/ sectoral cap & compliance with tax ~~rates~~ laws.

b) A wholly owned subsidiary set up a NR which is under 100% automatic route & no performance linked condition can issue shares or debentures against pre incorporation expenses upto 5% of capital or 5L USD, whichever is less.

Terms & conditions for Tr. of shares/deb by way of sale from Resident → NR & vice versa.

Date :

~~PERMISSIBLE LIMITS UNDER PORTF~~

TERMS AND CONDITIONS FOR TRANSFER OF SHARES BY WAY OF SALE

1) The parties involved in transaction —
   i) seller → (resident, nonresident)
   ii) Buyer
   iii) duly authorised
   iv) Authorised agent dealer Bank.
   v) Indian Co.

2) Pricing Guidelines →

2.1 The under noted pricing are applicable to transactions —

i) Transfer of shares by way of sale —
   a) person (Indian) → outside.
   b) person (outside) → Indian.
ii) Exit by non-resident investor.

2.2 Transfer by non-resident to resident by share of Indian co are -
i) listed on SE, not less than price of prefrential allotment.
ii) Not listed on SE, not less than FMV determined by MB or CA

2.3 Transfer → Nonresident → Resident → not more than mini price

Date :

~~2.4~~
3) Method of payment and remittance / credit of sale proceeds –

3.1 Share purchased by non resident → shall be remitted through → normal Banking channel.

If NRI → by way of debit to his NRE A/c.

3.2 The sale proceed → shall be remitted outside India → By foreign currency A/c or Special Non-Resi. Rupee A/c

–"–

4) Documentation –

4.1 Document along with FC-TRS –

i) consent letter signed by buyer and seller.
ii) –"– signed by duly appointed agent, the power of attorney.
iii) The shareholding pattern of investee co.
iv) Certificate indicating FV of shares from CA.
v) copy of Broker's note.
vi) undertaking from the buyer to aquire shares.

4.2 For sale of shares by person resident outside india.
i) Consent letter. by buyer and seller
ii) consent letter if agent along with POA.
iii) Sale proceed shall be C/d to NRE

Date :

iv) Certificate of FV from CA.
v) No objection certificate
vi) Undertaking from buyer.

5) Reporting requirements →

5.1 FC-TRS submitted → transfer of shares → 60 days.

5.2 Recording transaction of transfer in the books on receipt of certificate from AD ~~bank~~.

5.3 inflow and outflow
↳ reported by AD branch → in R-returns.

5.4 share purchase / sold by FPI's → should reported in
↓
Form LEC.

5.5 shares / convertible debenture → purchased under portfolio (FPI)
↓
cannot be transferred by sale under pvt. arran.

Documents submitted by resident → Nonresident (Gift)

1) Name address of doner and donee
2) Relationship of transferor and transferee
3) Reason for gift
4) Govt. securities → certificate by CA.
5) Share debenture → —||—

Date :

6) Certificate by Indian company confirming the shares transfer are by way of gift.

7) declaration accepting partly paid shares that donee is aware of liability (call in arrears).

__/__/___

Reporting requirements under FDI:-

i) **Form FC-GPR (Gross provisional return)**: The Indian company issuing equity which is recognised as FDI shall report in form FC-GPR within 30 days of issue.

ii) **FC-TRS (Tr. of sh)**: This form is used when transfer of equity instrument happens b/w persons resident outside India or person resident outside India and another person resident in India. This form shall be filed within 60 days from transfer or receipt of funds, whichever is earlier.

iii) **Form LLP (I)**: Any LLP receiving capital contribution shall file form LLP (I) within 30 days of receipt of consideration.

iv) **Form LLP (II)**: In case of disinvestment / transfer of capital contri shall be filed within 60 days from transfer.

v) **form CN (convertible notes)**: Indian startups issuing CN to raise FDI as well as for reporting the transfer of shares shall file form CN within 30 days of transfer / issue.

vi) **downstream investment**: The Indian entity or investment vehicle making DI which is classified as Indirect foreign investment shall file form DI with RBI within 30 days of allotment of instruments

___/___/___

vii) * LEC(FII): The AD has to file LEC(FII) with the RBI to report equity investment by FPI on SE.

viii) LEC(NRI): The AD has to file LEC(NRI) with the RBI to report equity investment by NRI on SE.

ix) Form ESOP: Indian Company issuing stock option to employees outside India shall file form ESOP within 30days of giving options.

x) Annual returns on foreign liab. & assets: Every entity receiving FDI in the previous year shall submit form FLA by 15th of July every year to the RBI.

Permissible limit under ~~FPI~~ portfolio invt. sch. through SE for FPIs & NRIs:-

Individual holding of FPI → shall be less than 10%

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Earlier total agg. holding of FPI → shall not exceed 24%.

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Now, → FPI Agg. holding can be upto sectoral cap.

Sectoral cap → can be decreased for FPI by the Co. to 74% / 49% / 24% by passing BR + SR

→ It can again be increased to 49% / 74% or sectoral cap

↓

by passing BR + SR

→ However once increased → it cannot be decreased ~~even in sectors where FDI is prohibited~~

↓

Even in sector where FDI is prohibited → FPI upto 24% is allowed.

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For NRI → Individual → 5%
→ Agg → 10%

can be increased by Co. → 24%

↓

By BR + SR

Setting up of subsidiary by foreign banks:-

i) Foreign banks are allowed to set up banks in India in ~~on~~ any one of the 3 modes:

a) branch.

b) WOS.

c) subsidiary

ii) However the foreign bank can either operate through branches or through subsidiary but not both.

iii) Further, a foreign bank can establish a WOS either by converting existing branch or by obtaining a fresh banking license.

iv) If it wished to establish a subsidiary by acquiring shares of an existing bank, then it can invest a max of upto 74% (26% shall be held by residents at all time)

v) At present there is a limit of 10% on voting rights ~~by~~ in respect of banking companies.

operational framework for reclassification (FPI → FDI)

i) FPI → holding less than 10%

→ If threshold is crossed, within 5 trading days

divest excess holding or reclassify the existing holding as FDI.

Reclassification is not allowed in prohibited sector

→ If it is under Govt route then approval is taken

→ Concurrence of Investee Co. is mandatory.

→ Holder should declare his intent for reclassification.

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Upon receiving information of exceeding threshold → Custodian shall freeze + until the FPI is reclassified

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If no approval is obtained within 5 trading days → Compulsory divest the excess.

↓

If approval is granted → Custodian unfreeze the holding.

↓

Filings → ~~ECB~~ FC GPR → If new sh. were acquired
→ FC-TRS → If acquisition was done out of secondary market.
→ LEC (FII) → Reclassification.

↓

Shares are shifted from → ~~FD~~ FPI demat A/c
→ To FDI demat A/c.

Penalties :-

If a person violates any FDI regulations then he shall upon adjudication be liable to a penalty upto 3 times of the amt. involved and if the

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amt of contravention cannot be quantified then 2L.
Where it is a continuing one, then it may extent upto 5000 per day.

- Every reporting is done through single master form (SMF)

misc Point

- dividend & int are freely repatriable ~~without any int~~ (net of taxes).

Issue of ESOP & sweat equity:-

i) An Indian company may issue ESOP ~~and~~ or sweat equity share for its employees resident outside India of the company / HC / SC.

ii) Provided the foll. conditions are complied with:-

a) If the company is listed then the scheme is drawn as per SEBI Act & if unlisted then as per Companies (Sh. cap & deb) Rules, 2014.

b) The scheme is in compliance with the sectoral cap.

c) If the Co. is under approval route then the approval of Govt / RBI is obtained & if it is from Bangladesh/ Pakistan then it shall mandatorily require Govt of India's approval.

d) The issuing Co. within 30d. shall file returns in the form - ESOP

Pledge of shares

i) Pledge of sh. means creating security for the

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purpose of borrowing where the shares of India Company are pledged.

ii) Following are terms & conditions :-

a) If a promoter of company registered in India raising ECB's wants to secure it then he can do so by creating a pledge on it shares in favour of the lender, provided it complies with the foll. conditions :-

1) The term of pledge shall be coterminus with the life of ECB.

2) If invocation of pledge happens then the Transfer should be as per the directions issued by RBI.

3) A certi. from auditor that the ECB has been used for permitted use.

4) NOC from AD bank has to be obtained.

iii) A person resident outside India can also pledge shares of Indian Company provided the following is complied with:

a) In favour of Indian bank provided it is for bonafide purpose.

b) In favour of NBFC provided it is for bonafide purpose.

c) In favour of overseas bank provided it is for bonafide purpose.

iv) In case of invocation of pledge, transfer of equity instruments shall comply with sectoral caps, tax laws, pricing guidelines, etc.

Remittance on winding up / liquidation of Companies :-

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i) The authorised dealer may allow remittance of winding up proceeds provided the applicant submits

a) NOC from Inc. tax department.

b) Auditor's certificate confirming that the liabilities in India have been fully paid

c) Auditor's certi. that the winding up is as per provision of Companies Act, 2013

d) In case of winding up otherwise than by Court, & an auditor's certificate to the effect that no legal proceedings are pending against the Co. in India.