

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

NOTIFICATION NO. S.O. 3732(E) [F.NO.1/14/EM/2015], DATED 17-10-2019

In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:—

CHAPTER I PRELIMINARY

Short title and commencement

1. (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.
- (2) Save as otherwise provided in these rules, they shall come into force from the date of their publication in the Official Gazette.

Definitions

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

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

Explanation.—

- [i) *Equity shares issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 or any other applicable law, shall include equity shares that have been partly paid. "Convertible debentures" means fully and mandatorily convertible debentures which are fully paid. "Preference shares" means fully and mandatorily convertible preference shares which are fully paid. "Share Warrants" are those issued by*

an Indian Company in accordance with the regulations made by the Securities and Exchange Board of India, the Companies Act, 2013 or any other applicable law. Equity instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.]

(ii) Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue or as may be specified by the Reserve Bank from time to time. Twenty- five per cent of the total consideration amount (including share premium, if any) shall be received upfront.

(iii) In case of share warrants, at least twenty-five per cent of the consideration shall be received upfront and the balance amount within eighteen months of the issuance of share warrants.

- (l) "escrow account" means an escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016;
- (m) "FDI linked performance conditions" means the sector specific conditions specified in Schedule I of these rules for companies receiving foreign investment;
- (n) "FVCI" means a Foreign Venture Capital Investor incorporated and established outside India and registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000;
- (o) "foreign central bank" means an institution or organisation or body corporate established in a country outside India and entrusted with the responsibility of carrying out central bank functions under the law for the time being in force in that country;
- (p) "FCNR (B) account" means a Foreign Currency Non-Resident (Bank) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016;
- (q) "FCCB" or "Foreign Currency Convertible Bond" means a bond issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993;
- (r) "FDI" or "Foreign Direct Investment" means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company;

Note:— In case an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below ten percent, of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI;

Explanation: — Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised;

- (s) "foreign investment" means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP;

[Explanation: - If a declaration is made by a person as per the provisions of the Companies Act, 2013 or any other applicable law, as the case may be, about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;]

Note:- A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company;

- (t) "foreign portfolio investment" means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of equity instrument of a listed Indian company;
- (u) "FPI" or "Foreign Portfolio Investor" means a person registered in accordance with the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014;
- (v) "government approval" means the approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be;

- (w) "group company" means two or more enterprises which, directly or indirectly, are in a position to (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) appoint more than fifty per cent of members of Board of Directors in the other enterprise;
- (x) "hybrid securities" means hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India;
- [(y) "*Indian company*" means a company as defined in the Companies Act, 2013 or a body corporate established or constituted by or under any Central or State Act, which is incorporated in India;

Note:

- (i) *It is clarified that reference to 'company' or 'investee company' or 'transferee company' or 'transferor company' in these rules also includes a reference to a body corporate established or constituted by or under any Central or State Act.*
 - (ii) *It is further clarified that if the term 'Company ' or 'Indian company' or 'Investee company' or 'transferee company' or 'transferor company' is qualified by a reference to a company incorporated under the Companies Act, 2013 such term shall mean a company incorporated under the said Act but not a body corporate.*
 - (iii) *It is also clarified that 'Indian company' does not include a society, trust or any entity, which is excluded as an eligible investee entity under the FDI Policy.]*
 - (z) "IDR" or "Indian Depository Receipts (IDRs)" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;
 - (aa) "Indian entity" shall mean an Indian company or a LLP ;
 - (ab) "investing company" means an Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings or securities;
 - (ac) "investment" means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India;
- Explanation:—*
- (i) Investment shall include to acquire, hold or transfer depository receipts issued outside India, the underlying of which is a security issued by a person resident in India;
 - (ii) for the purpose of LLP, investment shall mean capital contribution or acquisition or transfer of profit shares;
- (ad) "investment on repatriation basis" means an investment, sale or maturity proceeds of which are net of taxes, eligible to be repatriated out of India, and the expression "investment on non-repatriation basis", shall be construed accordingly;
 - (ae) "investment vehicle" means an entity registered and regulated under the regulations framed by the Securities and Exchange Board of India or any other authority designated for that purpose and shall include, namely:—
 - (i) Real Estate Investment Trusts (REITs) governed by the Securities and Exchange Board of India (REITs) Regulations, 2014;
 - (ii) Infrastructure Investment Trusts (InvIts) governed by the Securities and Exchange Board of India (InvIts) Regulations, 2014
 - (iii) Alternative Investment Funds (AIFs) governed by the Securities and Exchange Board of India (AIFs) Regulations, 2012 ;
- [***]
- (af) "LLP" means a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
 - (ag) "listed Indian company" means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and the expression "unlisted Indian company" shall be construed accordingly;
 - (ah) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing:—

- (i) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
 - (ii) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;
- (ai) "non-debt instruments" means the following instruments; namely :—
- (i) all investments in equity instruments in incorporated entities: public, private, listed and unlisted;
 - (ii) capital participation in LLP;
 - (iii) all instruments of investment recognised in the FDI policy notified from time to time;
 - (iv) investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvIts);
 - (v) investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
 - (vi) junior-most layer (i.e. equity tranche) of securitisation structure;
 - (vii) acquisition, sale or dealing directly in immovable property;
 - (viii) contribution to trusts; and
 - (ix) depository receipts issued against equity instruments;
- (aj) "NRI" or "Non-Resident Indian" means an individual resident outside India who is a citizen of India;
- (ak) "OCI" or "Overseas Citizen of India" means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955 (57 of 1955);
- (al) "resident Indian citizen" means an individual who is a person resident in India and is a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 ;
- (am) "sectoral cap" means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity [***] instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity.

Explanation:

- (i) FCCBs and DRs having underlying of instruments being in the nature of debt shall not be included in the sectoral cap;
 - (ii) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned under the sectoral cap;
- [(ama) *"Share Based Employee Benefits" means issue of equity instruments to employees or directors or employees or directors of the holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India, pursuant to Share Based Employee Benefits schemes formulated by an Indian Company;*]
- (an) "startup company" means a private company incorporated under the Companies Act, 2013 and identified under G.S.R. 180(E), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;
- [(ana) *"subsidiary" shall have the same meaning as is assigned to it in the Companies Act, 2013, as amended from time to time;*]
- (ao) "sweat equity shares" means sweat equity shares defined under the Companies Act, 2013;
- (ap) "transferable development rights (TDR)" shall have the meaning assigned to it in the regulations made under sub-section (2) of section 6 of the Act;
- (aq) "unit" means a beneficial interest of an investor in an investment vehicle;
- (ar) "venture capital fund" means a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

(2) The words and expressions used but not defined in these rules shall have the same meanings respectively assigned to them in the Act, rules and regulations.

Reserve Bank to administer these rules

[2(A). *(1)These rules shall be administered by the Reserve Bank.*

(2)While administrating these rules, the Reserve Bank may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.]

CHAPTER II

GENERAL CONDITIONS APPLICABLE TO ALL INVESTORS

Restriction on investment in India by a person resident outside India

3. Save as otherwise provided in the Act or rules or regulations made thereunder, no person resident outside India shall make any investment in India :

Provided that an investment made in accordance with the Act or the rules or the regulations made thereunder and held on the date of commencement of these rules shall be deemed to have been made under these rules and shall accordingly be governed by these rules:

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons [***], 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

4. Save as otherwise provided in the Act or rules or regulations made thereunder, an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books:

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

Permission for making investment by a person resident outside India

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

CHAPTER III

INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA

Investments by person resident outside India

6. A person resident outside India may make investment as under:—

- (a) may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the terms and conditions specified in Schedule I:

[Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval:

Provided further that, a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors or activities prohibited for foreign investment:

Provided also that 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 or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval.]

[Provided also that a Multilateral Bank or Fund, of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India]

Note: Issue or transfer of "participating interest or right" in oil fields by Indian companies to a person resident outside India would be treated as foreign investment and shall comply with the conditions laid down in Schedule I.

- (b) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an LLP, in the manner and subject to the terms and conditions specified in Schedule VI.
- (c) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an investment vehicle, in the manner and subject to the terms and conditions specified in Schedule VIII.
- (d) A person resident outside India may invest in the depository receipts (DRs) issued by foreign depositories against eligible securities in the manner and subject to the terms and conditions specified in Schedule IX.

Acquisition through rights issue or bonus issue

7. A person resident outside India and having investment in an Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue, provided that,—

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

[***]

[Acquisition after renunciation of rights.

7A. A person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of these rules]

[Issue of Employees Stock Options, sweat equity shares and Share Based Employee Benefits to persons resident outside India.

8. An Indian company may issue "employees' stock option", "sweat equity shares", and "Share Based Employee Benefits" to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India:

Provided that -

- (a) *the scheme has been drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 or as per other applicable law, as the case may be;*

- (b) *the "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" so issued under the applicable rules or regulations are in compliance with the sectoral cap applicable to the said company;*
- (c) *the issue of "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" in a company where foreign investment is under the approval route shall require prior government approval;*
- (d) *issue of "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" to a citizen of Bangladesh or Pakistan shall require prior government approval :*

Provided further that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.]

Transfer of equity instruments of an Indian company by or to a person resident outside India

9. A person resident outside India holding equity instruments of an Indian company or units in accordance with these rules or a person resident in India, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, specified in the Schedules of these rules and subject to the terms and conditions prescribed hereunder :

(1) a person resident outside India, not being a non-resident Indian or an overseas citizen of India or an erstwhile overseas corporate body may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India;

Explanation: It shall also include transfer of equity instruments of an Indian company pursuant to liquidation, merger, de-merger and amalgamation of entities or companies incorporated or registered outside India.

Provided that.—

- (i) prior government approval shall be obtained for any transfer in case the company is engaged in a sector which requires government approval;
- (ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, the transfer by way of sale where the transferee intends to hold the equity instruments on a repatriable basis, shall be in compliance with and subject to the adherence to entry routes, sectoral caps or investment limits, as specified in these rules and attendant conditionalities for such investment, pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank from time to time;

(2) A person resident outside India, holding equity instruments of an Indian company or units in accordance with these rules may transfer the same to a person resident in India by way of sale or gift or may sell the same on a recognised stock exchange in India in the manner specified by the Securities and Exchange Board of India :

Provided that. —

- (i) the transfer by way of sale shall be in compliance with and subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;
- (ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, conditions at item (i) of the proviso shall not apply.

(3) A person resident in India holding equity instruments of an Indian company or units, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;

(4) A person resident in India holding equity instruments or units of an Indian company [***] may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank, in the manner prescribed, and subject to the following conditions, namely:—

- (i) the donee is eligible to hold such a security under the Schedules of these Rules;
- (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme;

Explanation: The five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme will be on cumulative basis by a single person to another single person.

- (iii) the applicable sectoral cap in the Indian company is not breached;
 - (iv) the donor and the donee shall be "relatives" within the meaning in clause (77) of section 2 of the Companies Act, 2013;
 - (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of fifty-thousand US Dollars;
 - (vi) such other conditions as considered necessary in public interest by the Central Government.
- (5) A person resident outside India holding equity instruments of an Indian company containing an optionality clause in accordance with these rules and exercising the option or right, may exit without any assured return, subject to the pricing guidelines prescribed in these rules and a minimum lock-in period of one year or minimum lock-in period as prescribed in these rules, whichever is higher.
- (6) In case of transfer of equity instruments between a person resident in India and a person resident outside India, an amount not exceeding twenty five percent of the total consideration,—
- (i) may be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement; or
 - (ii) may be settled through an escrow arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement; or
 - (iii) may be indemnified by the seller for a period not exceeding eighteen months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller
:

Provided that the total consideration finally paid for the shares shall be compliant with the applicable pricing guidelines.

(7) In case of transfer of equity instruments between a person resident in India and a person resident outside India, a person resident outside India may open an escrow account in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 and such escrow account may be funded by way of inward remittance through banking channels and/ or by way of guarantee issued by an authorised dealer bank, subject to the terms and conditions as specified in the Foreign Exchange Management (Guarantees) Regulations, 2000.

(8) The transfer of equity instruments of an Indian company or units of an investment vehicle by way of pledge is subject to the following terms and conditions, namely :—

- (i) any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing in compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing raised by the borrowing company subject to the following further conditions, namely :—
 - (A) the period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;
 - (B) in case of invocation of pledge, transfer shall be made in accordance with these rules and directions issued by the Reserve Bank;
 - (C) the statutory auditor has certified that the borrowing company shall utilise or has utilised the proceeds of the external commercial borrowing for the permitted end-use only;
 - (D) no person shall pledge any such share unless a no-objection has been obtained from an authorised dealer bank that the above conditions have been complied with;
- (ii) any person resident outside India holding equity instruments in an Indian company or units of an investment vehicle may pledge the equity instruments or units, as the case may be,—
 - (A) in favour of a bank in India to secure the credit facilities being extended to such Indian company for *bona fide* purposes,

- (B) in favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company,
 - (C) in favour of a non-banking financial company registered with the Reserve Bank to secure the credit facilities being extended to such Indian company for *bona fide* purposes,
 - (D) subject to the authorised dealer bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank in this regard;
- (iii) in case of invocation of pledge, transfer of equity instruments of an Indian company or units shall be in accordance with entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge.

CHAPTER IV

INVESTMENT BY FOREIGN PORTFOLIO INVESTOR (FPI)

Investment by FPI

10. A FPI may make investments as under:—

(1) A FPI may purchase or sell equity instruments of an Indian company which is listed or to be listed on a recognised stock exchange in India, and/or may purchase or sell securities other than equity instruments, in the manner and subject to the terms and conditions specified in Schedule II.

Note - A FPI may trade or invest in all exchange traded derivative contracts approved by Securities and Exchange Board of India from time to time subject to the limits specified by the Securities and Exchange Board of India and the conditions prescribed in Schedule II.

(2) A FPI may purchase, hold, or sell Indian Depository Receipts (IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions as prescribed in Schedule X.

[Transfer of equity instruments of an Indian company by FPI.]

11. *A FPI holding equity instruments of an Indian company or units in accordance with these rules, may transfer such equity instruments or units held by him in compliance with the conditions, if any, specified in the Schedules annexed to these rules, subject to the terms and conditions specified therein and by the Securities and Exchange Board of India:*

Provided that, -

- (i) *prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires the Government approval;*
- (ii) *where the acquisition of equity instruments by FPI under Schedule II has resulted in a breach of the applicable aggregate FPI limits or sectoral limits the provisions of item (iii) of sub-paragraph (a) of paragraph (1) of Schedule II shall apply.]*

CHAPTER V

INVESTMENT BY NON-RESIDENT INDIAN OR AN OVERSEAS CITIZEN OF INDIA

Investment by NRI or OCI

12. A NRI or an OCI may make investments as under:- (1) A NRI or an OCI may, on repatriation basis, purchase or sell equity instruments of a listed Indian company and other securities in the manner and subject to the terms and conditions prescribed in Schedule III.

(2) A NRI or an OCI may, on non-repatriation basis, purchase or sell equity instruments of an Indian company or other securities or contribute to the capital of a LLP or a firm or proprietary concern, in the manner and subject to the terms and conditions specified in Schedule IV.

Note: A NRI or an OCI may trade or invest in all exchange traded derivative contracts approved by the Securities and Exchange Board of India from time to time subject to the limits specified by Securities and Exchange Board of India and conditions prescribed in Schedule III.

(3) A NRI or an OCI may purchase, hold, or sell Indian Depository Receipts (IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions specified in Schedule X.

Transfer of equity instruments by NRI or OCI

13. A NRI or an OCI holding equity instruments of an Indian company or units in accordance with these rules may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in the Schedules of these rules and subject to the terms and conditions prescribed hereunder :

(1) A NRI or an OCI holding equity instruments of an Indian company or units on repatriation basis may transfer the same by way of sale or gift to any person resident outside India :

Provided that,—

- (i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires Government approval;
- (ii) where the acquisition of equity instruments by an NRI or an OCI under the provisions of Schedule III of these rules has resulted in a breach of the applicable aggregate NRI or OCI limit or sectoral limits, the NRI or the OCI shall sell such equity instruments to a person resident in India eligible to hold such instruments within the time stipulated by the Reserve Bank of India in consultation with the Central Government and the breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale, provided the sale is within the prescribed time, shall not be reckoned as a contravention under these rules.

(2) A NRI or an OCI or an eligible investor under Schedule IV of these rules, holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;

Provided that the entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions shall not apply in case the transfer is to an NRI or an OCI or an eligible investor under Schedule IV of these rules acquiring such investment.

(3) A NRI or an OCI or an eligible investor under Schedule IV of these rules holding equity instruments or units of an Indian company on a non-repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank of India, in the manner prescribed, and subject to the following conditions, namely :—

- (i) the donee is eligible to hold such a security under relevant Schedules of these rules;
- (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each mutual fund scheme;
Explanation: The five percent shall be on cumulative basis by a single person to another single person.
- (iii) the applicable sectoral cap in the Indian company is not breached;
- (iv) the donor and the donee shall be "relatives" within the meaning in clause (77) of section 2 of the Companies Act, 2013;
- (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50000;
- (vi) such other conditions as may be considered necessary in public interest by the Central Government.

(4) A NRI or an OCI or an eligible investor specified under Schedule IV of these rules holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same by way of gift to an NRI or an OCI or an eligible investor under Schedule IV of these rules who shall hold it on a non-repatriable basis.

(5) An erstwhile OCB may transfer equity instruments subject to the directions issued by the Reserve Bank of India from time to time in this regard.

Explanation: "Overseas Corporate Body (OCB)" means an entity de-recognised through Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003.

CHAPTER VI

INVESTMENT BY OTHER NON-RESIDENT INVESTORS

Investment in securities by other non-resident investors

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

Transfer of securities by other non-resident investors

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

CHAPTER VII

INVESTMENT BY FOREIGN VENTURE CAPITAL INVESTOR

Investment by FVCI

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

Transfer of equity instruments of an Indian company by or to a FVCI

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

CHAPTER VIII

GENERAL PROVISIONS

Issue of Convertible Notes by an Indian startup company

18. (1) A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

(2) A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.

(3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

(4) A NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with Schedule IV of these rules.

(5) A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.

Merger or demerger or amalgamation of Indian companies

19. *[(1) Where a scheme of compromise or arrangement or merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, or transfer of undertaking of one or more Indian company to another Indian company, or involving division of one or more Indian company, has been approved by the National Company Law Tribunal (NCLT) or other authority competent to do so by law, the transferee company or the new company, as the case may be, may issue equity instruments to the existing shareholders of the transferor company resident outside India, subject to the following conditions, namely:-*

- (a) the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits, as the case may be and the attendant conditionalities of investment by a person resident outside India*

:

Provided that where the percentage is likely to breach the sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approval from the Central Government;

- (b) the transferor company or the transferee company or the new company is not engaged in any sector prohibited for investment by a person resident outside India.

Note: Government approval shall not be required in case of mergers and acquisitions taking place in sectors under automatic route.]

(2) where a scheme of [*compromise or arrangement or*] merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company where any of the companies involved is listed on a recognised stock exchange in India, then the scheme of arrangement shall be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.

Reporting requirements

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

Pricing guidelines

21. (1) The pricing guidelines specified in these rules shall not be applicable for any transfer by way of sale done in accordance with Securities and Exchange Board of India regulations where the pricing is specified by Securities and Exchange Board of India.

(2) Unless otherwise prescribed in these rules, the price of equity instruments of an Indian company, —

- (a) issued by such company to a person resident outside India shall not be less than :

- (i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- (ii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian Company.

[Explanation: *In case of convertible equity instruments, the price or conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with these rules.*]

- (b) transferred from a person resident in India to a person resident outside India shall not be less than,

- (i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company;
- (ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- (iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian company.

- (c) transferred by a person resident outside India to a person resident in India shall not exceed :

- (i) the price worked out in accordance with the relevant Securities and Exchange Board of India guidelines in case of a listed Indian company;
- (ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 :

Provided that the price is determined for such duration as specified in the Securities and Exchange Board of India Guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares;

- (iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian company.

Explanation: The guiding principle shall be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment or agreement and shall exit at the price prevailing at the time of exit.

- (iv) in case of swap of equity instruments, subject to the condition that irrespective of the amount, valuation involved in the swap arrangement shall have to be made by a Merchant Banker registered with the Securities and Exchange Board of India or an investment banker outside India registered with the appropriate regulatory authority in the host country.
- (v) where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments shall be made at face value subject to entry route and sectoral caps.
- (vi) in case of share warrants, their pricing and the price or conversion formula shall be determined upfront:

Provided that these pricing guidelines shall not be applicable for investment in equity instruments by a person resident outside India on a non-repatriation basis.

Taxes and remittances of sale proceeds

22. (1) Taxes - All transaction under these rules shall be undertaken through banking channels in India and subject to the payment of applicable taxes and other duties or levies in India.

(2) Remittance of sale proceeds :

- (a) No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these rules , the conditions prescribed in the relevant Schedule and as specified by the Reserve Bank.
- (b) An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India :

Provided that —

- (i) the security was held by the seller on repatriation basis; and
- (ii) either the security has been sold in compliance with the pricing guidelines or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof.

Downstream investment

23. (1) Indian entity which has received indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment.

Explanation: Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to one hundred percent is permitted under automatic route and there are no FDI linked performance conditions.

(2) With effect from the 31st day of July, 2012, downstream investment(s) made under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, by a banking company, as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) incorporated in India, which is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India, shall not count towards indirect foreign investment, however, their strategic downstream investment shall be counted towards indirect foreign investment for the company in which such investment is being made.

(3) Guidelines for calculating total foreign investment in Indian companies are as follows,—

- (a) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment;
- (b) FCCBs and DRs having underlying of instruments in the nature of debt shall not be reckoned for total foreign investment;
- (c) the methodology for calculating total foreign investment shall apply at every stage of investment in Indian companies and thus in each and every Indian company;
- (d) for the purpose of downstream investment, the portfolio investment held as on 31st March of the previous financial year in the Indian company making the downstream investment shall be considered for computing its total foreign investment;
- (e) indirect foreign investment received by a wholly owned subsidiary of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment.

(4) Downstream investment that is treated as indirect foreign investment for the investee entity shall be subject to the following conditions, namely :—

- (a) downstream investment shall have the approval of the Board of Directors as also a shareholders' Agreement, if any;
- (b) for the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets and the downstream investments may be made through internal accruals and for this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes. Further raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder.

(5) Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to—

- (a) a person resident outside India, subject to the reporting requirements as specified by the Reserve Bank.
- (b) a person resident in India subject to adherence to pricing guidelines;
- (c) an Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India.

(6) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these rules for the downstream investment made by it at second level and so on and so forth and such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis and such compliance of these rules shall be mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the regional office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the Registered Office.

(7) The provisions (5) and (6) of rule 23 shall apply *mutatis mutandis* to a LLP.

Note: Downstream investment that is treated as indirect foreign investment for the investee entity made in accordance with the guidelines in existence prior to the 13th February, 2009 shall not require any modification to conform to these rules and all such investments, after the said date, shall come under the ambit of these rules. Downstream investment that is treated as indirect foreign investment for the investee entity made between the 13th February, 2009 and 21st June 2013 which is not in conformity with these rules shall have to be intimated to the Reserve Bank by 3rd October, 2013 for treating such cases as compliant with these Rules.

Explanation.- For the purposes of this rule,—

- (a) "ownership of an Indian company" shall mean beneficial holding of more than fifty percent of the equity instruments of such company and "ownership of an LLP" shall mean contribution of more than fifty percent in its capital and having majority profit share;
- (b) "company owned by resident Indian citizens" shall mean an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens and "LLP owned by resident Indian citizens" shall mean an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens;
- (c) "company owned by persons resident outside India" shall mean an Indian company that is owned by persons resident outside India and "LLP owned by persons resident outside India" shall mean an LLP that is owned by persons resident outside India;
- (d) "control" shall mean the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement and for the purpose of LLP, "control" shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP;
- (e) "company controlled by resident Indian citizens" means an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens and "LLP controlled by resident Indian citizens" shall mean an LLP, the control of which is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens;
- (f) "company controlled by persons resident outside India" shall mean an Indian company that is controlled by persons resident outside India and "LLP controlled by persons resident outside India" shall mean an LLP that is controlled by persons resident outside India;
- (g) "downstream investment" shall mean investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity;
- (h) "holding company" shall have the same meaning as assigned to it under Companies Act, 2013;
- (i) "indirect foreign investment" means downstream investment received by an Indian entity from,-
 - (A) another Indian entity (IE) which has received foreign investment and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India; or

[Explanation: *An investment made by an Indian entity which is owned and controlled by NRI(s), on a non-repatriation basis, shall not be considered for calculation of indirect foreign investment.]*

(B) an investment vehicle whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India :

Provided that no person resident in India other than an Indian entity can receive Indirect Foreign Investment;

- (j) "total foreign investment" means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis;
- (k) "strategic downstream investment" means investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.

CHAPTER IX

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

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

24. A NRI or an OCI may —

- (a) acquire immovable property in India other than an agricultural land or farm house or plantation property:

Provided that the consideration, if any, for transfer, shall be made out of :

- (i) funds received in India through banking channels by way of inward remittance from any place outside India ; or
- (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

- (b) acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:—
 - (i) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - (ii) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.

Joint acquisition by the spouse of a NRI or an OCI

25. A person resident outside India, not being an NRI or an OCI, who is a spouse of an NRI or an OCI may acquire one immovable property (other than agricultural land or farm house or plantation property), jointly with his or her NRI or OCI spouse :

Provided that —

- (a) consideration for transfer, shall be made out of —
 - (i) funds received in India through banking channels by way of inward remittance from any place outside India; or
 - (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (b) no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause :

Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property :

Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

Acquisition of immovable property for carrying on a permitted activity

26. A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a Branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may —

- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity:

Provided that,—

- (i) all applicable laws, rules, regulations, for the time being in force are duly complied with; and
 - (ii) the person files with the Reserve Bank a declaration in the Form IPI as specified by the Reserve Bank from time to time, not later than ninety days from the date of such acquisition;
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) of rule 26:

Provided that no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

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

27. A Foreign Embassy or Diplomat or Consulate General may purchase or sell immovable property in India other than agricultural land or plantation property or farm house provided :

- (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase or sale; and
- (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

Acquisition by a long-term visa holder

28. A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions, namely :—

- (a) the property shall not be located in and around restricted or protected areas so notified by the Central Government and cantonment areas;
- (b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he or she is residing in India on LTV;
- (c) the registration documents of the property shall mention the nationality and the fact that such person is on LTV;
- (d) the property of such person may be attached or confiscated in the event of his or her indulgence in anti-India activities;
- (e) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP) or Foreigners Registration Office (FRO) or Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
- (f) such person shall be eligible to sell the property only after acquiring Indian citizenship, however, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP or FRO or FRRO concerned.

Repatriation of sale proceeds

29. (1) A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub- section.

(2) In the event of sale of immovable property other than agricultural land or farm house or plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:—

- (a) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of these rules;
- (b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out

of funds held in Non-Resident External Account;

- (c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

(3) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

Prohibition on transfer of immovable property in India

30. (1) Save as otherwise provided in the Act or rules, no person resident outside India shall transfer any immovable property in India:

Provided that:—

- (a) the Reserve Bank may, for sufficient reasons, permit the transfer subject to such conditions as may be considered necessary;
- (b) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000;
- (c) an authorised dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender :

Provided further that :—

- (i) the funds shall be used by the borrowing company only for its core business purposes overseas;
- (ii) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.

(2) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition.

Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

31. No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease not exceeding five years :

Provided that this prohibition shall not apply to an OCI.

Explanation: For the purpose of this rule, the term "citizen" shall include natural persons and legal entities.

Miscellaneous

32. Any transaction involving acquisition or transfer of immovable property under these rules shall be undertaken:—

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

Savings

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

SCHEDULE I

[See rule 6(a)]

PURCHASE OR SALE OF EQUITY INSTRUMENTS OF AN INDIAN COMPANY BY A PERSON RESIDENT OUTSIDE INDIA

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

- (a) An Indian company may issue equity instruments to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities prescribed in this Schedule.
- (b) A person resident outside India may purchase equity instruments of a listed Indian company on a stock exchange in India:

Provided that—

- (i) the person resident outside India making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control;
 - (ii) the amount of consideration may be paid as per the mode of payment specified by the Reserve Bank or out of the dividend payable by Indian investee company in which the person resident outside India has acquired and continues to hold the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 provided the right to receive dividend is established and the dividend amount has been credited to a specially designated non-interest bearing rupee account for acquisition of shares on the recognised stock exchange.
- (c) A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no FDI linked performance conditions, may issue equity instruments to the said non-resident entity against pre-incorporation or pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its authorised capital or USD 500,000 whichever is less, subject to the condition that within thirty days from the date of issue of equity instruments but not later than one year from the date of incorporation or such time as the Reserve Bank permits, the Indian company shall report the transaction to the Reserve Bank as per the reporting requirements as specified by the Reserve Bank.
- (d) An Indian company may issue, subject to compliance with the conditions prescribed by the Central Government and/or the Reserve Bank from time to time, equity instruments to a person resident outside India, if the Indian investee company is engaged in an automatic route sector, against,—
 - (i) swap of equity instruments; or
 - (ii) import of capital goods or machinery or equipment (excluding second-hand machinery); or
 - (iii) pre-operative or pre-incorporation expenses (including payments of rent etc.) :

Provided that the Government approval shall be obtained if the Indian investee company is engaged in a sector under Government route and the applications for approval shall be made in the manner prescribed by the Central Government from time to time.

- (e) An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted under the Act or the rules and regulations framed or directions issued thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder or has been permitted by the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder:

Provided that in case where permission has been granted by the Reserve Bank for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under the Act or the rules or the regulations framed thereunder have been completed.

- (f) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

(2) Sectors prohibited for FDI

- (a) Lottery business including Government or private lottery, online lotteries, etc.

- (b) Gambling and betting including casinos, etc.
- (c) Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights
- (f) Real estate business or construction of farm houses

[Explanation.—For the purpose of this rule, 'real estate business' means dealing in land and immovable property with a view to earning profit from there and does not include development of townships, construction of residential or commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships, real estate broking services and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014 and earning of rent or income on lease of the property, not amounting to transfer.]

- (g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- (h) Activities or sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities mentioned in paragraph (3) of Schedule I).
- (i) Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

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

Unless otherwise specified in these Rules or the Schedules, the entry routes and sectoral caps for the total foreign investment in an Indian entity shall be as follows, namely :—

(a) Entry routes.—

- (i) "Automatic route" means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank or the Central Government;
- (ii) "Government route" means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.
- (iii) Aggregate foreign portfolio investment up to forty-nine percent of the paid-up capital on a fully diluted basis or the sectoral or statutory cap, whichever is lower, shall not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India and other investments by a person resident outside India shall be subject to the conditions of Government approval and compliance of sectoral conditions as laid down in these rules.

(b) Sectoral caps.—

- (i) Sectoral cap for the sectors or activities specified in the table is the limit indicated against each sector. The total foreign investment shall not exceed the sectoral or statutory cap.
- (ii) Foreign investment in the following sectors or activities is subject to applicable laws or regulations, security and other conditionalities.
- (iii) In sectors or activities not listed below or not prohibited under paragraph (2) of Schedule I of these rules, foreign investment is permitted up to one hundred percent on the automatic route, subject to applicable laws or regulations, security and other conditionalities:
Provided that foreign investment in financial services other than those indicated under serial number "F" below would require prior approval of the Government.
- (iv) Wherever there is a requirement of minimum capitalisation, it shall include premium received along with the face value of the equity instrument, only when it is received by the company upon issue of such instruments to the person resident outside India and the amount paid by the transferee during post-issue transfer beyond the issue price of the capital instrument, shall not be taken into account while calculating minimum capitalization requirement.

- (v) (A) Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, shall require prior approval of the Government.

Note : Compliance to these rules by the core investment companies is in addition to the compliance of the regulatory framework prescribed to such companies as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder.

(B) Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, shall be under 100% automatic route.

- (vi) For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment that is treated as indirect foreign investment for the investee entity, may receive investment in its equity instruments from persons resident outside India under automatic route, however, approval of the Government shall be required for such companies for undertaking activities which are under Government route and as and when such a company commences business or makes downstream investment that is treated as indirect foreign investment for the investee entity, it shall have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.
- (vii) The onus of compliance with the sectoral or statutory caps on such foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.
- (viii) Wherever the person resident outside India who has made foreign investment specifies a particular auditor or audit firm having international network for the audit of the Indian investee company, then audit of such investee company shall be carried out as joint audit wherein one of the auditors is not part of the same network.

TABLE

<i>Sl. No.</i>	<i>Sector/Activity</i>	<i>Sectoral Cap</i>	<i>Entry Route</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1.	Agriculture and Animal Husbandry		
1.1	<p>(a) Floriculture, Horticulture and Cultivation of vegetables and mushrooms under controlled conditions;</p> <p>(b) Development and production of seeds and planting material;</p> <p>(c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture; and</p> <p>(d) Services related to agro and allied sectors.</p> <p>Note: Other than the above, foreign investment is not allowed in any other agricultural sector or activity.</p>	100%	Automatic
1.2	Other Conditions		
	<p>The term 'under controlled conditions' covers the following:</p> <p>'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.</p>		

2.	Plantation		
2.1	<p>(a) Tea sector including tea plantations</p> <p>(b) Coffee plantations</p> <p>(c) Rubber plantations</p> <p>(d) Cardamom plantations</p> <p>(e) Palm oil tree plantations</p> <p>(f) Olive oil tree plantation</p> <p>Note: Foreign investment is not allowed in any plantation sector/activity other than those listed above.</p>	100%	Automatic
2.2	Other Conditions		
	Prior approval of the State Government concerned is required in case of any future land use change.		
3.	Mining		
3.1	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 and Regulation) Act, 1957.	100%	Automatic
3.2	Coal and Lignite		
	<p>[(a) Coal and Lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under and subject to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and the Coal Mines (Special Provisions) Act, 2015 (11 of 2015).]</p> <p>(b) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.</p> <p>[(c) For sale of coal, coal mining activities including associated processing infrastructure subject to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Coal Mines (Special Provisions) Act, 2015 and as amended from time to time and other relevant Acts on the subject.]</p>	100%	Automatic
3.3	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities		
	(a) Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957.	100%	Government
3.4	Other Conditions		
	<p>[(a) "Associated Processing Infrastructure" as contained in 3.2 (c) includes coal washery, crushing, coal handling, and separation (magnetic and non-magnetic)]</p> <p>[(b)] Foreign investment for separation of titanium bearing minerals and ores shall be subject to the following conditions:</p>		

	<p>(i) Value addition facilities are set up within India along with transfer of technology;</p> <p>(ii) Disposal of tailings during the mineral separation shall be carried out in accordance with regulations 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.</p> <p>[(c)] Foreign investment 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.</p> <p>Clarification:</p> <p>(i) 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.</p> <p>(ii) 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 this Rules can be achieved, the conditions prescribed at (a)(i) above shall be deemed to be fulfilled.</p>		
4.	Petroleum and Natural Gas		
4.1	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
4.2	Petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
[4.3	<i>Notwithstanding anything contained at Sl. No. 4.2 above, foreign investment up to 100% under the automatic route is allowed in case an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government.]</i>		
5.	Manufacturing		
5.1	[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 his products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.]	100%	Automatic
	Notwithstanding the provisions of these Rules on trading sector, 100 percent foreign investment under the government approval		

	route is allowed for trading, including through e-commerce, in respect of food products manufactured and/or produced in India. Applications for foreign investment in food products retail trading shall be processed in the Department of Industrial Policy and Promotion before being considered by the Government for approval.		
[6.]	Defence		
6.1	<i>Defence Industry subject to Industrial license under the Industries (Development and Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959</i>	100%	<i>Automatic route 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</i>
6.2	<i>Other Conditions</i>		
	<p>(a) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses.</p> <p>(b) 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 submit a declaration with the Ministry of Defence in cases of change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor, for FDI up to 49%, within a period of thirty days of such change and any proposal for raising FDI beyond 49% from such companies shall require Government approval.</p> <p>(c) License applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, in consultation with Ministry of Defence and Ministry of External Affairs.</p> <p>(d) Foreign investment in the sector shall be subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.</p> <p>(e) Investee company shall be structured to be self-sufficient in the areas of product design and development and the investee or joint venture company along with the manufacturing facility, shall also have maintenance and life cycle support facility of the product being manufactured in India.</p> <p>(f) 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.</p>		1
7.	Broadcasting		
7.1	Broadcasting Carriage Services		
7.1.1	<p>(a) Teleports (setting up of up-linking HUBs/Teleports);</p> <p>(b) Direct to Home (DTH);</p>	100%	Automatic

	<p>(c) Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking up-gradation of networks towards digitalization and addressability);</p> <p>(d) Mobile TV;</p> <p>(e) Head-end-in-the Sky Broadcasting Service (HITS)</p>		
7.1.2	Cable Networks [Other MSOs not undertaking up-gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)].	100%	Automatic
7.1.3	<i>Note</i> : Infusion of fresh foreign investment for sectors specified in 7.1.1 and 7.1.2 above, beyond 49 per cent 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		
7.2	Broadcasting Content Services		
7.2.1	Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information and Broadcasting, for grant of permission for setting up of FM Radio stations.	49%	Government
7.2.2	Up-Linking of 'News & Current Affairs' TV Channels	49%	Government
[7.2.3	Uploading/Streaming of News and Current Affairs through Digital Media	26%	Government]
[7.2.4]	Up-linking of Non-'News & Current Affairs' TV Channels/Downlinking of TV Channels	100%	Automatic
7.3	Other Conditions		
	<p>(a) Foreign investment in companies engaged in all the afore-stated services shall be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.</p> <p>(b) Foreign investment in the afore-stated broadcasting carriage services shall be subject to the terms and conditions as may be specified by the Ministry of Information and Broadcasting, from time to time, in this regard.</p> <p>(c) Licensee shall ensure that broadcasting service installation carried out by it shall not become a safety hazard and is not in contravention of any statute, rule or regulations and public policy.</p> <p>(d) In the I and B sector where the sectoral cap is up to 49 per cent, the company should be owned and controlled by resident Indian citizens or Indian companies which are owned and controlled by resident Indian citizens.</p> <p>(i) For this purpose, the equity held by the largest Indian shareholder shall be at least 51 percent 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 and the term 'largest Indian shareholder' used in this clause, shall include any or a combination of the following, namely :—</p> <p>(1) In the case of an individual shareholder,</p>		

	<p>(aa) The individual shareholder,</p> <p>(bb) A relative of the shareholder within the meaning of section 2(77) of Companies Act, 2013.</p> <p>(cc) A company or group of companies in which the individual shareholder or Hindu Undivided Family to which he belongs has management and controlling interest.</p> <p>(2) In the case of an Indian company,</p> <p>(aa) The Indian company</p> <p>(bb) A group of Indian companies under the same management and ownership control.</p> <p>(3) For this purpose, "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 per cent of the shares.</p> <p>(4) Provided that, in case of a combination of all or any of the entities mentioned in sub-clause (d)(i) 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.</p>		
8.	Print Media		
8.1	Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
8.2.1	Other conditions		
	<p>(a) 'Magazine', for the purpose of these guidelines, shall be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.</p> <p>(b) Foreign investment shall 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 and Broadcasting on 4-12-2008.</p>		
8.3	Publishing or printing of Scientific and Technical Magazine or specialty journals or 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
8.4	Publication of facsimile edition of foreign newspapers	100%	Government
8.4.1	Other conditions:		
	<p>(a) Foreign investment shall be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.</p> <p>(b) 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, 2013.</p> <p>(c) Publication of facsimile edition of foreign newspaper shall 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 and Broadcasting on 31-3-2006.</p>		
9.	Civil Aviation		

9.1	<p>The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services or Seaplane services, Ground Handling Services, Maintenance and Repair organizations, Flying training institutes, and Technical training institutions.</p> <p>For the purposes of the Civil Aviation sector:</p> <p>(a) "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;</p> <p>(b) "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;</p> <p>(c) "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;</p> <p>(d) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;</p> <p>(e) "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;</p> <p>(f) "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;</p> <p>(g) "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;</p> <p>(h) "Non-Scheduled air transport service" means any service which is not a scheduled air transport service and will include Cargo airlines;</p> <p>(i) "Cargo airlines" would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;</p> <p>(j) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;</p> <p>(k) "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.</p>		
9.2	Airports		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic

[9.3]	<i>Air Transport Services</i>		
	<i>(1)(a) Scheduled Air Transport Service/Domestic Scheduled Passenger Airline</i> <i>(b) Regional Air Transport Service</i>	100%	<i>Automatic up to 49%</i> <i>(Automatic up to 100% for NRIs) Government route beyond 49%</i>
	<i>(2) Non-Scheduled Air Transport Services</i>	100%	<i>Automatic</i>
	<i>(3) Helicopter services/seaplane services requiring Directorate General of Civil Aviation (DGCA) approval</i>	100%	<i>Automatic</i>
	<i>Note: As per Schedule XI of the Aircraft Rules, 1937, Air Operator Certificate to operate Scheduled Air Transport Services (including Domestic Scheduled Passenger Airline or Regional Air Transport Service) is granted to such company or a body corporate,—</i> <i>(a) which is registered and has its principal place of business within India;</i> <i>(b) whose Chairman and at least two-thirds of its Directors are citizens of India; and</i> <i>(c) whose substantial ownership and effective control is vested in Indian nationals.]</i>		
9.4	<i>Other Services under Civil Aviation sector</i>		
	<i>(a) Ground Handling Services subject to sectoral regulations and security clearance</i>	100%	<i>Automatic</i>
	<i>(b) Maintenance and Repair organizations; flying training institutes and technical training institutions</i>	100%	<i>Automatic</i>
[9.5]	<i>Other Conditions</i>		
	<i>(a) Air Transport Services shall include Domestic Scheduled Passenger Airlines, Non-Scheduled Air Transport Services, helicopter and seaplane services.</i> <i>(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.</i> <i>(c) Foreign airlines are allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49 per cent of their paid-up capital, subject to the following conditions, namely :—</i> <i>(i) it is made under the Government approval route,</i> <i>(ii) the 49 per cent limit will subsume FDI and FII/FPI investment,</i> <i>(iii) the investments so made would need to comply with the relevant regulations of the Securities and Exchange Board of India (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,</i>		

	<p>(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</p> <p>(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.</p> <p>(d) In addition to the above conditions, foreign investment in M/s Air India Limited shall be subject to the following conditions, namely :—</p> <p>(i) foreign investments in M/s Air India Limited, including that of foreign airlines shall not exceed 49 per cent either directly or indirectly except in case of those NRIs, who are Indian Nationals, where foreign investments is permitted up to 100 per cent under automatic route,</p> <p>(ii) substantial ownership and effective control of M/s Air India Limited shall continue to be vested in Indian Nationals as stipulated in Aircraft Rules, 1937.</p> <p>(e) FDI in Civil Aviation shall be subject to provisions of the Aircraft Rules, 1937, as amended from time to time.</p> <p>Note:</p> <p>(i) The FDI limits or entry routes mentioned at serial numbers 9.2 and 9.3 above, are applicable in the situation where there is no investment by foreign airline.</p> <p>(ii) Any investment by foreign airlines in companies operating in Air Transport Services, including in M/s Air India Limited, shall be subject to entries (b) and (c) above.</p> <p>(iii) The dispensation for those NRIs, who are Indian Nationals, regarding FDI up to 100 per cent will continue in respect of the investment regime specified at entries (c) (ii) and (d) above.]</p>		
10.	Construction Development: Townships, Housing, Built-up infrastructure		
10.1	Construction-development projects (which shall 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
10.2	Other Conditions		
	<p>(a) Each phase of the construction development project shall be considered as a separate project.</p> <p>(b) The investor shall 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.</p> <p>(c) Notwithstanding anything contained at (b) above, a person resident outside India shall 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 a person resident outside India to another person resident outside India,</p>		

without repatriation of foreign investment will neither be subject to any lock-in period nor to any government approval.

(d) 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 or Municipal or Local Body concerned.

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

(f) The Indian investee company shall be responsible for obtaining all necessary approvals, including those of the building or 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 or Municipal or Local Body concerned.

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

Note:

(1) Foreign investment 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).

(2) Condition of lock-in period shall not apply to Hotels and Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs or OCIs.

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

(4) Foreign investment up to 100 percent under automatic route is permitted in completed projects for operating and managing townships, malls/shopping complexes and business centres. Consequent to such foreign investment, transfer of ownership and/or control of the investee company from persons resident in India to persons resident outside India is also permitted, however, there shall be a lock-in-period of three years, calculated with reference to each tranche of foreign investment and transfer of immovable property or part thereof is not permitted during this period.

(5) "Transfer", in relation to this 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

	<p>(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</p> <p>(e) any transaction, by acquiring capital instruments 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.</p> <p>(6) Real estate business' means dealing in land and immovable property with a view to earning profit therefrom 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.</p> <p><i>Explanation: —</i></p> <p>(a) Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the Securities and Exchange Board of India (REITs) Regulations, 2014 shall also be excluded from the definition of "real estate business".</p> <p>(b) Earning of rent income on lease of the property, not amounting to transfer, shall not amount to real estate business.</p> <p>(c) Transfer in relation to real estate includes,</p> <p>(i) the sale, exchange or relinquishment of the asset; or</p> <p>(ii) the extinguishment of any rights therein; or</p> <p>(iii) the compulsory acquisition thereof under any law; or</p> <p>(iv) 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</p> <p>(v) any transaction, by acquiring capital instruments 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.</p> <p>(7) Real estate broking services shall be excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.</p>		
11.	Industrial Parks		
11.1	For the purpose of this sector:		
	<p>(a) "Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.</p> <p>(b) "Infrastructure" refers to facilities required for functioning of units located in the Industrial Park and includes roads</p>	100%	Automatic

	<p>(including approach roads), railway line/sidings including electrified railway lines and connectivity to the main railway line, water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.</p> <p>(c) "Common Facilities" refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), railway line/sidings including electrified railway lines and connectivity to the main railway line, water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid centre, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.</p> <p>(d) "Allocable area" in the Industrial Park means—</p> <p>(i) in the case of plots of developed land - the net site area available for allocation to the units, excluding the area for common facilities.</p> <p>(ii) in the case of built up space - the floor area and built-up space utilized for providing common facilities.</p> <p>(iii) in the case of a combination of developed land and built-up space - the net site and floor area available for allocation to the units excluding the site area and built-up space utilized for providing common facilities.</p> <p>(e) "Industrial Activity" means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied research and development on bio-technology, pharmaceutical sciences or life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.</p>		
11.2	<p>Foreign investment in Industrial Parks shall not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 10 above, provided the Industrial Parks meet with the undermentioned conditions:</p> <p>(a) it shall comprise of a minimum of 10 units and no single unit shall occupy more than 50 per cent of the allocable area;</p> <p>(b) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66 per cent of the total allocable area.</p>		
12.	Satellites - Establishment and operation		
	Satellites Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
13.	Private Security Agencies	49%	Government
14.	Telecom services		

	(including Telecom Infrastructure Providers Category-I)		
14.1	<i>[All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United 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), Other Service Providers and such other services as may be permitted by the Department of Telecommunications (DoT).]</i>	100%	<i>[Automatic]</i>
14.2	Other Conditions		
	<i>[The licensing, security and any other terms and conditions as notified by Department of Telecommunications (DoT) from time to time, shall be observed by licensee/entities providing services as referred in serial number 14.1 above as well as investors.]</i>		
15.	Trading		
15.1	Cash and Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)		
15.1.1	<p>Definition:</p> <p>(a) Cash and Carry Wholesale trading (WT)/Wholesale trading, shall mean sale of goods or merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers.</p> <p>(b) Wholesale trading shall, 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 shall be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading shall include resale, processing and thereafter sale, bulk imports with export/ex-bonded warehouse business sales and B2B e-Commerce.</p>	100%	Automatic
15.1.2	<p>Other Conditions:</p> <p>(a) For undertaking 'WT', requisite licenses/registration/permits, as specified under the relevant Acts or Regulations or Rules or Orders of the State Government or Government Body or Government Authority or Local Self-Government Body under that State Government shall be obtained.</p> <p>(b) Except in cases of sales to Government, sales made by the wholesaler shall be considered as 'cash and carry wholesale trading/wholesale trading' with valid business customers, only when WT is made to the following entities:</p> <p>(i) Entities holding sales tax or VAT registration or service tax or excise duty or Goods and Services Tax (GST) registration; or</p> <p>(ii) Entities holding trade licenses <i>i.e.</i> a license or registration certificate or membership certificate or registration under Shops and Establishment Act, issued by a</p>		

	<p>Government Authority or Government Body/Local Self-Government Authority, reflecting that the entity or person holding the license or registration certificate or membership certificate, as the case may be, is itself or himself or herself engaged in a business involving commercial activity; or</p> <p>(iii) Entities holding permits or license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities or Local Self Government Bodies; or</p> <p>(iv) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self-consumption.</p> <p>Note: An Entity, to whom WT is made, may fulfil any one of the 4 conditions at (b)(i) to (iv) above.</p> <p>(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. shall be maintained on a day to day basis.</p> <p>(d) WT of goods shall be permitted among companies of the same group. However, such WT to group companies taken together shall not exceed 25 per cent of the total turnover of the wholesale venture.</p> <p>(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.</p> <p>(f) A wholesale or cash and carry trader can undertake single brand retail trading, subject to the conditions mentioned in para 15.3. An entity undertaking wholesale/cash and carry as well as retail business shall be mandated to maintain separate books of account for these two arms of the business and duly audited by the statutory auditors. Conditions under these rules for wholesale or cash and carry business and for retail business have to be separately complied with by the respective business arms.</p>		
15.2	E-Commerce		
15.2.1	B2B E-commerce activities	100%	Automatic
	Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, <i>inter alia</i> implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
15.2.2	Market place model of e-commerce	100%	Automatic
15.2.3	<p>Other Conditions:</p> <p>(a) 'E-commerce' means buying and selling of goods and services including digital products over digital & electronic network;</p> <p>(b) 'E-commerce entity' means a company incorporated under Companies Act, 1956 or the Companies Act, 2013;</p> <p>(c) '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;</p>		

(d) 'Market place model of e-commerce' means providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.

(e) Digital and electronic network shall include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.

(f) Marketplace e-commerce entity shall be permitted to enter into transactions with sellers registered on its platform on B2B basis.

(g) E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services.

(h) E-commerce entity providing a marketplace shall not exercise ownership over the inventory *i.e.* goods purported to be sold.

Explanation: Inventory of a vendor shall 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 which shall render the business into inventory based model.

(i) 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, shall not be permitted to sell its products on the platform run by such 'marketplace entity.'

(j) Goods/services made available for sale electronically on website shall clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction shall be responsibility of the seller.

(k) Payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines issued by the Reserve Bank in this regard.

(l) Any warranty or guarantee of goods and services sold shall be the responsibility of the seller.

(m) E-commerce entities providing marketplace shall 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.

Explanation: Such services shall include but not limited to fulfilment, logistics, warehousing, advertisement or 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.

	<p>(n) Guidelines on cash and carry wholesale trading as given in Sl. No. 15.1.2 above shall apply to B2B e-commerce activities.</p> <p>(o) No e-commerce marketplace entity shall mandate any seller to sell any of their product exclusively on its platform.</p> <p>[(p) 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.]</p> <p><i>Note</i> : Foreign investment is not permitted in inventory based model of e-commerce.</p>		
15.2.4	Sale of services through e-commerce shall be under automatic route subject to the sector specific conditions, applicable laws/regulations, security and other conditionalities.		
15.3	Single Brand Product Retail Trading		
	Foreign investment in Single Brand Product Retail Trading (SBRT) 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.	100%	[Automatic]
15.3.1	Other conditions:		
	<p>(a) Products to be sold should be of a 'Single Brand' only.</p> <p>(b) Products should be sold under the same brand internationally <i>i.e.</i> products shall be sold under the same brand in one or more countries other than India.</p> <p>(c) 'Single Brand' product-retail trading shall cover only products which are branded during manufacturing.</p> <p>(d) A person resident outside India, 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.</p> <p>[(e) In respect of proposals involving foreign investment beyond 51 per cent, sourcing of 30 per cent of the value of goods procured, shall be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing shall be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company shall be required to maintain. The procurement requirement is to be met in the first instance as an average of five years total value of goods procured beginning 1st April of the year of the commencement of SBRT business (<i>i.e.</i> opening of first store or start of online retail, whichever is earlier). Thereafter, SBRT entity shall be required to meet the 30 per cent 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.</p>		

	<p>(f) For the purpose of meeting local sourcing requirement laid down at entry (e), all procurements made 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 per cent. 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.</p> <p>(g) A 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 two years from date of start of online retail.]</p> <p><i>Note :</i></p> <p>(1) Conditions mentioned at (b) and (d) above shall not be applicable for undertaking SBRT of Indian brands.</p> <p>(2) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens.</p> <p>(3) Sourcing norms shall not be applicable up to three years from commencement of the business <i>i.e.</i> opening of the first store [<i>or start of online retail, whichever is earlier</i>] 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, condition mentioned at 15.3.1(e) above shall 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 shall 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.</p>		
15.4	Multi Brand Retail Trading (MBRT)		
15.4.1	Other Conditions		
	<p>(a) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, can be unbranded.</p> <p>(b) Minimum amount to be brought in as foreign investment would be USD 100 million.</p> <p>(c) At least 50 percent of the total foreign investment brought in the first tranche of USD 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' shall include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure shall include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse,</p>	51%	Government

agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, shall not be counted for purposes of back-end infrastructure. Subsequent investment in the back-end infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

(d) At least 30 percent of the value of procurement of manufactured or processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant and machinery not exceeding USD2 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status shall 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 USD2 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives shall also be considered in this category. The procurement requirement shall 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 foreign investment is received. Thereafter, it shall have to be met on an annual basis.

(e) Self-certification is required by the company, to ensure compliance of the conditions at serial Nos. (b), (c) and (d) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

(f) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per the 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 or urban agglomeration limits of such cities; retail locations shall be restricted to conforming areas as per the Master or Zonal Plans of the concerned cities and provision shall be made for requisite facilities such as transport connectivity and parking.

(g) Government shall have the first right to procure agricultural products.

(h) The above policy is an enabling policy only and the State Governments or Union Territories shall 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 or Union Territories which have agreed, or agree in future, to allow foreign investment in MBRT under this policy. The States or Union Territories which have conveyed their agreement are mentioned at 15.4.2. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy and Promotion and additions shall be made to the said list. The establishment of the retail sales outlets shall be in compliance of applicable State/Union Territory laws or regulations, such as the Shops and Establishments Act etc.

(i) Retail trading, in any form, by means of e-commerce, shall not be permissible, for companies with foreign investment

	engaged in multi-brand retail trading. (j) Applications shall be processed in the Department of Industrial Policy and Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered for Government approval.		
15.4.2	States or Union territories are Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman and Diu and Dadra and Nagar Haveli (Union territories)		
15.5	Duty Free Shops		
15.5.1	Other Conditions:		
	<p>(a) Duty Free Shops would mean shops set up in custom bonded area at International Airports or International Seaports and Land Custom Stations where there is transit of international passengers.</p> <p>(b) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.</p> <p>(c) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.</p>	100%	Automatic
16	Pharmaceuticals		
16.1	Greenfield	100%	Automatic
16.2	Brownfield	100%	Automatic up to 74%; Government route beyond 74%
16.3	Other Conditions		
	<p>(a) 'Non-compete' clause shall not be allowed except in special circumstances with the Government approval.</p> <p>(b) The prospective investor and the prospective investee are required to provide a certificate given at 16.4 along with the application submitted for Government approval.</p> <p>(c) Government approval may incorporate appropriate conditions for foreign investment in brownfield cases.</p> <p>(d) Foreign investment in brownfield pharmaceuticals, irrespective of entry route, is further subject to the following conditions :</p> <p>(i) 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 foreign investment, 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 foreign investment. Of these, the highest level of production in any of these three years shall be taken as the level.</p> <p>(ii) Research and Development (R&D) expenses being maintained in value terms for 5 years at an absolute</p>		

	<p>quantitative level at the time of induction of foreign investment. 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 foreign investment.</p> <p>(iii) The administrative Ministry shall be provided complete information pertaining to the transfer of technology, if any, along with induction of foreign investment into the investee company.</p> <p>(iv) The administrative Ministry(s) <i>i.e.</i> Ministry of Health and Family Welfare, Department of Pharmaceuticals or any other regulatory Agency/Development as notified by Central Government from time to time, shall monitor the compliance of conditionalities.</p> <p><i>Note :</i></p> <p>(1) Foreign investment up to 100% under the automatic route is permitted for manufacturing of medical devices. The abovementioned conditions shall, therefore, not be applicable to greenfield as well as brownfield projects of this industry.</p> <p>(2) 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:—</p> <p>(aa) Diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;</p> <p>(ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or disability;</p> <p>(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;</p> <p>(ad) supporting or sustaining life;</p> <p>(ae) disinfection of medical devices;</p> <p>(af) control of conception;</p> <p>and which does not achieve its 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;</p> <p>(b) an accessory to such an instrument, apparatus, appliance, material or other article;</p> <p>(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.</p>		
16.4	<p>Certificate to be furnished by the Prospective Investor as well as the Prospective Recipient Entity</p> <p>It is certified that the following is the complete list of all <i>inter se</i> agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity</p>		

	<p>1.</p> <p>2.</p> <p>3.</p> <p>(copies of all agreements to be enclosed)</p> <p>It is also certified that none of the <i>inter se</i> agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity contain any non-compete clause in any form whatsoever.</p> <p>It is further certified that there are no other contracts/agreements between the foreign investor(s) and investee brownfield pharma entity other than those listed above.</p> <p>The foreign investor(s) and investee brownfield pharma entity undertake to submit to the FIPB any <i>inter se</i> agreements that may be entered into between them subsequent to the submission and consideration of this application.</p>		
17	Railway Infrastructure		
17.1	<p>Construction, operation and maintenance of the following:</p> <p>(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) Signalling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity to main railway line and (x) Mass Rapid Transport Systems.</p>	100%	Automatic
17.2	Other Conditions		
	<p>(a) Foreign investment in this sector open to private-sector participation is subject to sectoral guidelines of Ministry of Railways.</p> <p>(b) Proposals involving foreign investment beyond 49 percent 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.</p>		
F	FINANCIAL SERVICES		
	Investment in financial services, other than those indicated below, would require prior Government approval.		
F.1	Asset Reconstruction Companies		
F.1.1	Other Conditions		
	<p>(a) Investment limit of a sponsor in the shareholding of an ARC shall be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Similarly, investment by institutional or non-institutional investors shall also be governed by the said Act.</p> <p>(b) 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</p>	100%	Automatic

	<p>directions/guidelines of Reserve Bank. Such investment shall be within the relevant regulatory cap as applicable.</p> <p>(c) All investments shall be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.</p>		
F.2	Banking - Private sector		
F.2.1	Other conditions:		
	<p>(a) At all times, at least 26 per cent of the paid up capital shall have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.</p> <p>(b) In case of NRIs individual holdings is restricted to 5 per cent of the total paid up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid up capital both on repatriation and non-repatriation basis. However, NRI holdings shall be allowed up to 24 per cent of the total paid up capital both on repatriation and non-repatriation basis subject to a special resolution to this effect passed by the banking company's general body.</p> <p><i>[(c) Applications for foreign direct investment in private banks having joint venture or subsidiary in insurance sector may be addressed to the Reserve Bank for consideration in consultation with the Insurance Regulatory and Development Authority of India, in order to ensure that the limit of foreign investment applicable for the insurance sector as specified in serial number F.8.1 and F.8.2 is not breached.]</i></p> <p>(d) Transfer of shares under FDI from residents to non-residents shall require approval of the Reserve Bank and/or the Government, wherever applicable.</p> <p>(e) The policies and procedures prescribed by RBI and other institutions such as Securities and Exchange Board of India, Ministry of Corporate Affairs and IRDAI on these matters shall apply.</p> <p>(f) RBI guidelines relating to acquisition by purchase or otherwise of capital instruments of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank shall apply to foreign investment as well.</p> <p>(g) Setting up of a subsidiary by foreign banks:</p> <p>(i) Foreign banks shall be permitted to either have branches or subsidiaries but not both.</p> <p>(ii) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria shall be allowed to hold 100 per cent paid-up capital to enable them to set up a wholly-owned subsidiary in India.</p> <p>(iii) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.</p>	74%	<p>Automatic up to 49%</p> <p>Government route beyond 49% and up to 74%</p>

	<p>(iv) A foreign bank shall be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank shall be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid-up capital of the private sector bank is held by residents at all times consistent with para (c) above.</p> <p>(v) A subsidiary of a foreign bank shall be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.</p> <p>(vi) Guidelines for setting up a wholly-owned subsidiary of a foreign bank shall be issued separately by RBI.</p> <p>(vii) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India shall have to be made to the RBI.</p> <p>(h) The present limit of 10 per cent on voting rights in respect banking companies may be noted by the potential investor.</p> <p>(i) All investments shall be subject to the guidelines prescribed for the banking sector under the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934.</p>		
F.3	Banking - Public Sector		
F.3.1	Banking - Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/80. This ceiling is also applicable to the State Bank of India.	20%	Government
F.4	Infrastructure Companies in the Securities Market		
F.4.1	Infrastructure companies in Securities Markets, namely, stock exchanges, commodity derivative exchanges, depositories and clearing corporations, in compliance with Securities and Exchange Board of India Regulations.	49%	Automatic
F.4.2	Other conditions:		
	<p>(a) Foreign investment, including investment by FPIs, shall be subject to the Guidelines or Rules or Regulations issued by the Central Government, Securities and Exchange Board of India and the Reserve Bank from time to time.</p> <p>(b) Words and expressions used herein and not defined in these rules 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 Securities and Exchange Board of India shall have the same meanings respectively assigned to them in those Acts or Regulations.</p>		
F.5	Commodities Spot Exchange		
F.5.1	Investment shall be subject to guidelines prescribed by the Central or State Government.	49%	Automatic
F.6	Power Exchanges		
	Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	Automatic

F.6.1	Other conditions		
	<p>(a) A person resident outside India including persons acting in concert should not hold more than 5 per cent.</p> <p>(b) The investment shall be in compliance with Securities and Exchange Board of India Regulations, other applicable laws/rules/regulations, security and other conditionalities.</p>		
F.7	Credit Information Companies		
F.7.1	Other conditions		
	<p>(a) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005 and regulatory clearance from the Reserve Bank.</p> <p>(b) FPI investment shall be permitted subject to the following conditions:</p> <p>(i) A single entity shall directly or indirectly hold below 10 percent equity;</p> <p>(ii) Any acquisition in excess of 1 percent shall have to be reported to Reserve Bank as a mandatory requirement; and</p> <p>(iii) FPIs investing in Credit Information Companies shall not seek a representation on the Board of Directors based upon their shareholding.</p>	100%	Automatic
F.8	Insurance		
F.8.1	[Insurance Company]	[74%]	Automatic
[F.8.1A	Life Insurance Corporation of India	20%	Automatic]
[F.8.2	Intermediaries or Insurance Intermediaries including 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.	100%	Automatic]
[[F.8.3.1	Other conditions applicable to Indian insurance companies and intermediaries or insurance intermediaries]		
	<p>(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 [seventy-four] per cent of the paid up equity capital of such Indian Insurance Company.</p> <p>(b) The foreign investment up to [seventy-four] per cent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval or verification by the Insurance Regulatory and Development Authority of India.</p> <p>(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 or approval from the Insurance Regulatory and Development Authority of India for undertaking insurance and related activities.</p>		

[(d)(I) In an Indian Insurance Company having foreign investment,—

(i) a majority of its directors;

(ii) a majority of its Key Management Persons; and

(iii) at least one among the Chairperson of its Board, its Managing Director and its Chief Executive Officer;

shall be Resident Indian Citizens.

Explanation.—For the above purposes, the expression- "Key Management Person" shall have the same meaning as assigned to it in guidelines made by the Insurance Regulatory and Development Authority of India on corporate governance for insurers in India.

(II) An Indian Insurance company having foreign investment shall comply with the provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time and applicable rules and regulations notified by the Department of Financial Services or the Insurance Regulatory and Development Authority of India 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 rule 11 read with Schedule II of these rules 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 in these rules.

(g) The foreign equity investment cap of 100 per cent 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 composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries] 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 Authority 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 the primary (non-insurance related) business must remain above 50 per cent of their total revenues in any financial year.*

(i) The insurance intermediary that has majority shareholding of foreign investors shall undertake the following:

	<p>(i) be incorporated as a limited company under the provisions of the Companies Act, 2013;</p> <p>(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;</p> <p>(iii) shall take prior permission of the Authority for repatriating dividend;</p> <p>(iv) shall bring in the latest technological, managerial and other skills;</p> <p>(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;</p> <p>(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;</p> <p>(vii) composition of the Board of Directors and key management persons shall be as specified by the concerned regulators;</p> <p>(j) The other condition under the heading 'Banking-Private Sector' specified against serial number F.2.1 shall be applicable in respect of bank promoted insurance companies.</p> <p>[(k) Terms "Equity Share Capital", "Foreign Direct Investment" (FDI), "Foreign Investors", "Foreign Portfolio Investment", "Indian Insurance Company", "Indian Company", "Non-resident Entity", "Public Financial Institution", "Resident Indian Citizen" and "Total Foreign Investment" shall have the same meaning as specified in the rules under the Insurance Act, 1938 or in the regulations issued by Insurance Regulatory and Development Authority of India from time to time, in respect of foreign investment in Indian Insurance Companies and intermediaries or insurance intermediaries.]]</p>		
[F.8.3.2	Other conditions applicable to the Life Insurance Corporation of India (LIC)		
	<p>(a) Foreign investment in LIC shall be subject to the provisions of the Life Insurance Corporation Act, 1956, (LIC Act) as amended from time to time (LIC Act) and such provisions of the Insurance Act, 1938, as amended from time to time, as are applicable to LIC</p> <p>(b) Provisions of clauses (e) and (f) under Sl. No. F.8.3.1, shall also apply to LIC, as if reference therein to an Indian Insurance Company is a reference to LIC.</p> <p>(c) The terms referred to in clause (k) under Sl. No. F.8.3.1 shall have the same meaning as referred to therein.</p> <p>Explanation.—For the purposes of this Sl. No., any reference to Indian insurance company or company referred to in clause (k) under Sl. No. F.8.3.1, shall be construed as a reference to LIC.]</p>		
F.9	Pension Sector		

F.9.1	Other conditions		
	<p>(a) Foreign investment in this sector shall be in accordance with the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.</p> <p>(b) Foreign investment in Pension Funds shall be subject to the condition that entities investing in capital instruments issued by an Indian Pension Fund as per section 24 of the PFRDA Act, 2013 shall obtain necessary registration from the PFRDA 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.</p> <p>(c) An Indian pension fund shall ensure that its ownership and control remains at all times with resident Indian entities as determined by the Government of India/PFRDA as per the rules or regulation issued by them.</p>	49%	Automatic
F.10	Other Financial Services		
F.10.1	Other Conditions		
	<p>(a) Other Financial Services shall mean financial services activities regulated by financial sector regulators, viz., Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India.</p> <p>(b) Foreign investment in 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalization norms, as specified by the concerned Regulator/Government Agency.</p> <p>(c) '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 per cent will be allowed under Government approval route subject to conditions including minimum capitalization requirement, as may be decided by the Government.</p> <p>(d) Any activity which is specifically regulated by an Act, the foreign investment limits shall be restricted to those levels/limit that may be specified in that Act, if so mentioned.</p> <p>(e) Downstream investments by any of these entities engaged in "Other Financial Services" that is treated as indirect foreign investment for the investee entity shall be subject to these rules.</p>	100%	Automatic

SCHEDULE II

(See rule 10(1))

Investments by Foreign Portfolio Investors

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

(a) Purchase and sale of equity instruments.—

A FPI may purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange in India subject to the following conditions, namely:—

- (i) The total holding by each FPI or an investor group, shall be less than 10 per cent of the total paid-up equity capital on a fully diluted basis or less than 10 per cent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all FPIs put together, including any other direct and indirect foreign investments in the Indian company [by FPIs] permitted under these rules, shall not exceed 24 per cent of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants. The said limit of 10 percent and 24 percent shall be called the individual and aggregate limit, respectively.

[Provided the aggregate limit of 24 per cent may be increased by the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively.]

- (ii) With effect from the 1st April, 2020, the aggregate limit shall be the sectoral caps applicable to the Indian company as laid out in sub-paragraph (b) of paragraph 3 of Schedule I of these rules, with respect to its paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid up value of each series of debentures or preference shares or share warrants:

Provided that the aggregate limit as provided above may be decreased by the Indian company concerned to a lower threshold limit of 24% or 49% or 74% as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively before 31st March, 2020:

Provided further, that the Indian company which has decreased its aggregate limit to 24% or 49% or 74%, may increase such aggregate limit to 49% or 74% or the sectoral cap or statutory ceiling respectively as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively:

Provided also that once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold:

Provided also that the aggregate limit with respect to an Indian company in a sector where FDI is prohibited shall be 24 per cent.

Explanation: In case, two or more FPI's including foreign Governments/their related entities are having common ownership, directly or indirectly, of more than fifty percent or common control, all such FPI's shall be treated as forming part of an investor group. Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

- (iii) *[The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within five trading days from the date of settlement of the trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within seven trading days from the date of settlement of the trades causing the breach. The divestment of holdings by the FPI and the reclassification of FPI investment as FDI shall be subject to further conditions, if any, specified by Securities and Exchange Board of India and the Reserve Bank in this regard. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under these rules.]*
- (iv) The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of 10 percent limit for FPI investments in a single company, if they form part of an investor group. However, certain foreign Government agencies and its related entities may be exempt from such clubbing requirements and

other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.

- (v) A FPI may purchase equity instruments of an Indian company through public offer or private placement, subject to the individual and aggregate limits specified under this Schedule:

Provided that —

(A) in case of public offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and

(B) in case of issue by private placement, the price is not less than—

(a) the price arrived in terms of guidelines issued by the Securities and Exchange Board of India, or (b) the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Merchant Banker or Chartered Accountant or a practicing Cost Accountant, as applicable registered with the Securities and Exchange Board of India

(vi) A FPI may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank and the Securities and Exchange Board of India from time to time.

(vii) Investments made under this Schedule shall be subject to the limits and margin requirements specified by the Reserve Bank or the Securities and Exchange Board of India as well as the stipulations regarding collateral securities as specified by the Reserve Bank from time to time.

(b) Purchase or sale of securities other than equity instruments by FPIs.—

(i) A FPI may purchase units of domestic mutual funds or Category III Alternative Investment Fund or offshore fund for which no objection is issued in accordance with the SEBI (Mutual Fund) Regulations, 1996, which in turn invest more than 50 percent in equity instruments on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India and the Reserve Bank.

(ii) An FPI may purchase units of REITs and InVITs on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India.

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

SCHEDULE III

(See rule 12(1))

Investments by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis

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

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognized stock exchange in India, subject to the following conditions, namely :—

(a) NRIs or OCIs may purchase and sell equity instruments through a branch designated by an Authorized Dealer for the purpose;

(b) The total holding by any individual NRI or OCI shall not exceed 5 percent of the total paid-up equity capital on a fully diluted basis or shall not exceed 5 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together shall not exceed ten percent of the total paid-up equity capital on a fully diluted basis or shall not exceed ten percent of the paid-up value of each series of debentures or preference shares or share warrants:

Provided that the aggregate ceiling of 10 percent may be raised to 24 percent if a special resolution to that effect is passed by the General Body of the Indian company.

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

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

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

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

(4) Subscription to National Pension System.—

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

Provided that NRIs or OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognised Stock Exchanges in India for their transactions in exchange traded derivative contracts as prescribed in sub-clause (2) of clause 12 of these Rules.

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

SCHEDULE IV

(See rule 12(2))

Investment by NRI or OCI on non-repatriation basis

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

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

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

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

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

(3) Prohibition on purchase of equity instruments of certain companies.

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

Explanation: Real estate business shall have the same meaning as specified in sub-paragraph (b) of paragraph (3) of Schedule 1.

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

B. Investment in a firm or a proprietary concern.

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

A NRI or an OCI may invest on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or proprietary concern is not engaged in any agricultural or plantation activity or print media or real estate business.

Explanation: Real estate business shall have the same meaning as specified in sub paragraph (b) of paragraph (3) of Schedule I.

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

SCHEDULE V

(See Rule (14))

Investment by other non-resident investors

Permission to other non-resident investors for purchase of securities

(1) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks may purchase securities subject to such terms and conditions as may be specified by the Reserve Bank and the Securities and Exchange Board of India.

(2) "Eligible Foreign Entity (EEE)" as defined in SEBI circular dated the 9th October 2018 and having actual exposure to Indian physical commodity market may participate in domestic commodity derivative markets in accordance with framework specified by the Securities and Exchange Board of India.

(3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

SCHEDULE VI

(See rule 6(b))

Investment in a Limited Liability Partnership (LLP)

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

SCHEDULE VII

(See rule 16)

Investment by a Foreign Venture Capital Investor (FVCI)

(1) Subject to the terms and conditions as may be laid down by the Central Government, a Foreign Venture Capital Investor (FVCI) may purchase,—

- (i) securities, issued by an Indian company engaged in any sector mentioned in paragraph (4) of this Schedule and whose securities are not listed on a recognised stock exchange at the time of issue of the said securities;
- (ii) units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.
- (iii) equity or equity linked instrument or debt instrument issued by an Indian 'start-up' irrespective of the sector in which the start-up is engaged. The definition of 'start-up' shall be as per Department for Promotion of Industry and Internal Trade's Notification No. G.S.R. 364(E), dated the 11th April, 2018 :

Provided that if the investment is in equity instruments, then the sectoral caps, entry routes and attendant conditions shall apply.

(2) A FVCI may purchase the securities or instruments mentioned above either from the issuer of these securities/ instruments or from any person holding these securities or instruments. The FVCI may invest in securities on a recognised stock exchange subject to the provisions of the Securities and Exchange Board of India (FVCI) Regulations, 2000.

(3) The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security or instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes or funds set up by the VCFs or Cat-I AIFs.

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

(5) List of sectors in which a Foreign Venture Capital Investor is allowed to invest is as follows :—

- (a) biotechnology;
- (b) IT related to hardware and software development;
- (c) nanotechnology;
- (d) seed research and development;
- (e) research and development of new chemical entities in pharmaceutical sector.
- (f) dairy industry;
- (g) poultry industry;
- (h) production of bio-fuels;
- (i) hotel-cum-convention centres with seating capacity of more than three thousand;
- (j) Infrastructure sector. The term "Infrastructure Sector" has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide notification F. No. 13/06/2009- INF, dated the March 27, 2012 as amended or updated.

SCHEDULE VIII

(See Rule 6(c))

Investment by a person resident outside India in an Investment Vehicle

(1) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh) may invest in units of Investment Vehicles.

(2) A person resident outside India who has acquired or purchased units in accordance with this Schedule may sell or transfer in any manner or redeem the units as per regulations framed by the Securities and Exchange Board of India or directions issued by the Reserve Bank.

(3) An Investment vehicle may issue its units to a person resident outside India against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle.

(4) Investment made by an Investment Vehicle into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India.

Provided that for sponsors or managers or investment managers organised in a form other than companies or LLPs, Securities and Exchange Board of India shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

Explanation: "Control" of the AIF should be in the hands of "sponsors" and "managers or investment managers", with the general exclusion to others. In case the "sponsors" and "managers or investment managers" of the AIF are individuals, for the treatment of down-stream investment by such AIF as domestic, "sponsors" and "manager or investment managers" should be resident Indian citizens.

(5) An Alternative Investment Fund Category III which has received any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest under the Act or rules or regulations made thereunder.

(6) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank .

SCHEDULE IX

(See rule 6(d))

Investment in Depository Receipts by a person resident outside India

(1) Issue or transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s).—

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

(2) Saving.—

Depository Receipts issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 shall be deemed to have been issued under the corresponding provisions of DR Scheme 2014 and have to comply with the provisions specified in this Schedule.

SCHEDULE X

(See rule 10(2))

Issue of Indian Depository Receipts

(1) Issue of IDRs.— Companies incorporated outside India may issue IDRs through a Domestic Depository, to persons resident in India and outside India, subject to the following conditions:

- (a) the issue of IDRs is in compliance with the Companies (Registration of Foreign Companies) Rules, 2014 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (b) any issue of IDRs by financial or banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulator(s);
- (c) IDRs shall be denominated in Indian rupee only;
- (d) the proceeds of the issue of IDRs shall be immediately repatriated outside India by the companies issuing such IDRs.

(2) Purchase or sale of IDRs.—

A FPI or a NRI or an OCI may purchase, hold, or sell IDRs, subject to the following terms and conditions, namely:—

- (a) the mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be as specified by the Reserve Bank;
- (b) limited two way fungibility of IDRs shall be permissible subject to the terms and conditions stipulated by the Reserve Bank in this regard;
- (c) IDR shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue;
- (d) Redemption or conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.