



Foreign Investments (FIs) by Non-Residents in India

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Foreign Investments (FIs) by Non-Residents in India

1. Introduction on FIs by Non-residents in India

(i) Permitted capital instruments

- (a) Equity Shares*
- (b) Convertible Debentures*
- (c) Convertible preference Shares*
- (d) Shares warrants*
- (e) American Deposit Receipts (ADRs)*
- (f) Global Deposit Receipts (GDRs)*
- (g) Foreign Currency Convertible Bonds (FCCBs)*
- (h) Real Estate Investment Trust (REIT)*
- (i) Alternative Investment Fund (AIF)*
- (j) Indian Depository Receipts (IDRs)*

(ii) Definition of the Non-resident to include :-

- (a) Non-resident individual*
- (b) Non-resident Indian (NRI)*
- (c) Person of Indian Origin (PIO)*
- (d) Overseas Citizen of India (OCI)*
- (e) Foreign Institutional Investor (FII)*
- (f) Foreign Ventures Capital Investor (FVCI)*
- (g) Qualified Foreign Investor (QFI)*
- (h) Foreign Portfolio Investor (FPI)*
- (i) Foreign Central Bank (FCB)*

- (j) *Multilateral Development Bank (MDB)*
- (k) *Sovereign Wealth Fund (SWF)*
- (l) **Endowment** Funds as set up Outside India
- (m) **Insurance** Funds as set up Outside India
- (n) **Pension** Funds as set up Outside India

(iii) Permitted Indian entity

- (a) *Company as incorporated in India*
- (b) *Partnership firm constituted in India*
- (c) *Proprietary Concern as set-up in India*
- (d) *Domestic Venture Capital fund (DVCF) as set-up in India*
- (e) *Limited Liabilities Partnership (LLP) as incorporated in India*
- (f) *Central Govt.*
- (g) *State Govt.*

(iv) Permitted modes for issuing equity shares under the followings:-

- (a) *External Commercial Borrowings (ECBs)*
- (b) *Lump-Sum Technical Know-how fee*
- (c) *Royalty*
- (d) *Import of Capital goods*
- (e) *Pre-operative Expenses*
- (f) *Pre incorporation Expenses*

(v) Permitted modes for receiving equity shares

- (a) *Equity shares under the purchase*
- (b) *Equity Shares under the Gift*
- (c) *Equity Shares under conversion from the ECBs*
- (d) *Equity Shares against the Lump-sum Technical known how fee*
- (e) *Equity Shares against the royalty*
- (f) *Equity shares under the Right issue*
- (g) *Equity shares under the Bonus issue*



- (h) *Equity shares under the Additional Right issue*
- (i) *Equity shares under the Merger*
- (j) *Equity shares under the demerger*
- (k) *Equity shares under the Amalgamation*
- (l) *Equity shares under the Employee Stock Option Scheme (ESOP)*

(vi) Permitted modes for the Investments

- (a) *Under repatriation basis*
- (b) *Under non repatriation basis*
- (c) *Under automatic route basis*
- (d) *Under approval route basis*

(vii) Permitted modes for the payments

- (a) *Direct foreign **remittance** under the normal banking channel from Outside India*
- (b) ***Debit** to NRO, NRE and FCNR (B) account*
- (c) ***Deferred** payment basis*

(viii) Not Permitted (Prohibited) Sectors/Activities

- (a) *Lottery Business*
- (b) *Gambling and Betting including Casino*
- (c) *Chit fund*
- (d) *Nidhi Company*
- (e) *Trading in TDRs*
- (f) *Real **Estate** Business (Trading). However permitted for the **Construction** activities*
- (g) *Construction of the **Farm Houses**. However permitted for the **Plantation** activities*
- (h) ***Not** permitted the following manufacturing items and also **not** permitted for whole sale, cash and carry, retail trading.*
 - (ha) *Cigars*
 - (hb) *Cheroots*
 - (hc) *Cigarillos*
 - (hd) *Cigarettes*



- (he) Tobacco
- (hf) Tobacco substitutes
- (hg) Atomic Energy
- (hh) Railway operations

2. Automatic Route and Approval Route

(i) Under the Automatic Route

- Investor or investee is **not** required **approval** from Govt. of India/RBI for the FIs under the **automatic** route. Now approximately **90%** FIs are permitted under the **automatic** route

(ii) Under the Approval Route

- (a) Investor or investee is required **approval** from Govt. of India through Foreign Investment Promotion Board (FIPB) for the FIs under the **approval** route. Now approximately **10%** FIs are permitted under the **approval** route
- (b) The Govt. of India has **abolished** the FIPB. Now **approval** required from concerned ministry of Govt. of India in consultation with Department of Industrial Policy and Promotion (DIPP) for the FIs under **approval** route

3. Pricing for the Convertible and Non-Convertible Debentures etc.

(i) For Convertible Debentures and Preference Shares

- (a) Pricing or conversion formula for convertible debentures and preference shares is to be determined at time of issue **not** at time of the **conversion**.
- (b) Price for the **unlisted** shares are not to be lower than the fair value at the time of conversion
- (c) Valuation is to be made in accordance to SEBI (ICDR) Regulations for the **listed** companies

(ii) For non-Convertible Debentures/ECBs

- (a) **Non-convertible**, optionally convertible or partially convertible debentures are to be considered as Foreign Debts (FDs) /ECBs.
- (b) Prescribed Norms for the ECBs



- (ba) Eligible borrowers
 - (bb) Recognized lenders
 - (bc) Maximum amount
 - (bd) Minimum Average Maturity Period (MAMP)
 - (be) **End use** concept etc.
- (c) Valuation is **not** required for the debts/ECBs

4. Permitted Foreign Entities

(i) Non Residents (NRs) including NRIs and PIOs

- (a) These are permitted to invest in accordance to FIs policy as applicable in India
- (b) However **non-residents** from Bangladesh and Pakistan are permitted under the **approval** route only
- (c) Investments are also permitted on **non-repatriation** basis from the NRIs and from company, trust and partnership firm as incorporated/constituted **Outside** India and also **owned** and **controlled** by a NRI are treated as **domestic** investments at par with the investments as made by a resident of India as clarified vide Circular No.06 dated October 20, 2016

(ii) Foreign Institutional Investors (FIIs)

- (a) SEBI registered FIIs are permitted to invest in capital of an Indian **listed** company under Portfolio Investment Scheme (PIS) through a recognized stock exchange only
- (b) **Individual and Aggregate Limit for the FIIs under PIS**
 - (ba) **Individual** limit for a single FII is **10%** of capital of the Indian company
 - (bb) **Aggregate** limit for the multiple FIIs is **24%** of capital of the Indian company
- (c) **Enhancement in Aggregate Limit for the FIIs**
 - (ca) Aggregate limit per company can be increased up to sectorial cap or statutory ceiling as case may be through passing a **special** resolution in the AGM/EGM
 - (cb) Prior **intimation** to the RBI is mandatory required



(cc) **Aggregate** of FIs +PIS together are also to be within sectorial cap or statutory ceiling as case may be, if any is applicable

(iii) Foreign Ventures Capital Investors (FVCIs)

- (a) SEBI registered FVCIs are permitted to invest up to **100%** capital of the Indian Venture Capital Undertaking (IVCU)
- (b) FVCIs are permitted to set up domestic Asset Management Company (AMC) in India to manage the funds
- (c) FVCIs are permitted to invest under the **automatic** route in accordance to schedule **6** of Notification No. FEMA **20**
- (d) FVCIs are permitted to invest in the **domestic** venture capital fund as registered under SEBI (Venture Capital Fund) Regulations, **1996**
- (e) FVCIs are also permitted to invest under the FIs Scheme as applicable to the permitted **non-resident**
- (f) FVCIs are permitted to invest in **listed** securities through a recognized stock Exchange Subject to provisions of SEBI (FVCI) Regulations, **2000**

(iv) Qualified Foreign Investors (QFIs)

- (a) QFIs are permitted to invest in the equity Shares under FIs policy as applicable in India
- (b) **QFIs to Includes:-**
 - (ba) A resident of the country where the Financial Action Task Force (FATF) Standard are compliance
 - (bb) A resident of the country where country is a signatory to the International Organization of Securities Commission's (IOSCO'S)
 - (bc) The resident should **not** be a resident of India
 - (bd) The resident should **not** be registered with SEBI as FII or **sub** account of the FII
- (c) QFIs are permitted to invest through SEBI registered Depository Participants (DPs) in equity shares of the **listed** Indian companies through recognized broker at recognized stock exchange in equity shares of the Indian companies offered for public in India



- (d) QFIs are also permitted to acquire the equity shares by way of the **right** shares, the **bonus** shares, equity shares on account of stock split, consolidation of equity shares on account of amalgamation, demerger or corporate actions subject to the prescribed investment limits for the FIs
- (e) QFIs are permitted to **sell** the equity shares in accordance to the SEBI guidelines
- (f) QFIs are permitted to tender the equity shares in **open offer** in accordance with SEBI (Substantial Acquisition of shares and Takeovers) Regulations, **2011**
- (fa) This open offer should be in accordance to SEBI (Delisting of Equity shares) Regulations, **2009**
- (fb) This open offer should be in accordance to SEBI (Buyback of Securities) Regulations, **1998** for buy back of shares of the listed companies
- (g) **Individual and Aggregate Limits for Investment by the QFIs**
- (ga) **Individual** limit is **5%** of paid up capital of an Indian company
- (gb) **Aggregate** limit is **10%** of paid up capital of an Indian company
- (gc) Limits for the OFIs are over and above the limit for FII and NRI investments limits as prescribed under **PIS** for the FIs in India
- (gd) However these limits are to be within **sectorial** limit or statutory cap as may be if any is applicable in India
- (gh) **Onus** of the monitoring and compliance of these limits are to be **jointly** and **severally** with the QFIs, DPs and Indian company
- (h) **Payments of the Dividend**
- (ha) Dividend payments on the equity shares are to be **remitted** to designated bank accounts of the QFIs outside India
- (hb) This also may be **credited** to single rupee pool bank account of the QFI in India.
- (hc) Banks are required to remit the dividend to designated bank account outside India within **5** working days
- (hd) QFIs are permitted to invest within **5** working days in **fresh** purchases of equity shares out of the dividend received



(i) **Demat Account**

- Demat account of a QFI is **not** permitted where details of ultimate beneficiary is **not** available

(j) **Responsibility of the DP**

- DP is required to ensure that equity shares as held by QFIs are free from **all** encumbrances including pledge or lien etc.

(k) **KYC norms**

- QFIs are required to submit combined **PAN-Cum-KYC** form as notified by the CBDT

(v) **Foreign Portfolio Investors (FPIs)**

(a) FPIs are permitted to invest in equity shares through recognized stock exchange only

(b) Limit for investments by the FPIs are over and above the limit fixed for FIs but FIs + FPIs **together** should be within sectorial limit or statutory cap as case may be, if any limit or cap is applicable in India.

(c) **Approval** from Govt. of India or from the RBI is **not** required for the FPIs where **control** of Indian company is **not** changed due to the FPIs investments

(d) **Onus** of the compliance for sectorial limit or statutory cap shall be on the **investee** Indian company.

5. **FIs from Nepal and Bhutan**

(i) Residents and/or Citizen of Nepal and Bhutan are permitted to invest in capital of the Indian Companies on **repatriation** basis like other foreign investors

(ii) However **repatriation** basis is permitted where FIs are made through direct inward **remittance** in free foreign exchange through normal banking Channel from outside India

6. **FIs has Owned and controlled by a Resident Indian Citizen**

- These investments are treated **domestic** investments at par with the other investments as made by a resident of India

(i) **Definition of the Owned by Resident Indian Citizen**



- Where more than **50%** of capital is ultimately **beneficially** owned by a Indian Citizen and/or Indian Company

(ii) Definition of the Controlled by Resident Indian Citizen

- Where power to appoint the **majority** of directors is with the resident Indian Citizen and/or Indian Company

(iii) Definition of the Indian Company

- Where company is incorporated in India under the Companies Act, **1956 or 2013**

(iv) Definition of the Indian Citizen

- Resident Indian Citizen is interpreted with the definition of a person resident in India in accordance to section **2(V)** of FEMA, **1999** read along with Indian Citizenship Act, **1955**

7. Eligible Indian Entity

(i) FIs in an Indian Company

- FIs are permitted in the Indian Companies

(ii) FIs in a Partnership firm or a Proprietary concern

(a) FIs by NRI or PIO

- NRI or PIO is permitted to invest in capital of partnership firm or proprietary concern in India **after** satisfaction of the following terms and conditions

(aa) That FIs are made through direct foreign inward **remittance** from Outside India or debit to NRE, FCNR(B) or NRO account

(ab) That Partnership firm or proprietary concern is **not** engaged in agricultural, plantation or real estate business activities

(ac) That NRI or PIO is **not** eligible for **repatriation** outside India

(b) NRI or PIO is required to obtain an **approval** from the RBI for **repatriation** option. These approvals are to be decided in consultation with the Govt. of India

(c) FIs by Non Residents other than NRI or PIO



- These are required to obtain an **approval** from the RBI for the FIs in partnership firm or proprietorship concern in India on **non-repatriation** basis. These approvals are to be decided in consultation with Govt. of India

(iii) FIs in the Domestic Venture Capital funds (DVCFs)

- (a) Non-resident entities, individuals and NRIs are permitted to invest in DVCF subject to **approval** from the RBI
- (b) However **automatic** route is also permitted where DVCF is Set-up as an incorporated company under the Companies Act, **1956** or **2013** subject to pricing guidelines, reporting requirements, mode of payment and minimum capitalization norms etc.

(iv) FIs in a Trust

- Non-residents are **not** permitted for the FIs in trust as constituted in India.

(v) FIs in Limited Liability Partnership (LLP)

- FIs are permitted in LLPs **after** satisfaction of the following terms and conditions
- (a) That FIs are permitted in LLPs under the **automatic** route where LLPs are operating in the sectors/activities which are permitted for **100%** FIs under the **automatic** route
 - (b) That FIs are **not** permitted in LLPs where LLPs are engaged in agricultural, plantation activity or real estate business
 - (c) That non-residents are permitted to invest in LLPs where non-residents and LLPs **both** are engaged in sectors/activities which are covered for **100%** FIs under the **automatic** route
 - (d) That LLPs are **not** permitted to invest further in any **other** entity
 - (e) That FIs are to be made through direct foreign inward remittance from Outside India or debit to NRE, FCNR(B) or NRO account as maintained in India
 - (f) That FIs by the FIIs and FVCIs are **not** permitted in the LLPs

(vi) FIs in any Other Entity

- FIs are **not** permitted in any other entity **except** the following:-
- (a) FIs in the Indian Companies



(b) *FIs in the partnership firms and proprietary concerns*

(c) *FIs in the DVCFs*

(d) *FIs in the LLPs*

8. Issue of the Capital Instruments

(i) *Capital instruments are to be issued within **180** days from the date of direct foreign **inward** remittance from Outside India through normal banking channels or debit to NRE, FCNR (B) or NRO account as maintained in India*

(ii) ***Outward** remittance or credit to NRE, FCNR (B) or NRO account is permitted where capital instrument is **not** issued within **180** days*

(iii) ***Non** Compliance of these provisions are to be treated as contravention under FEMA,1999 where penalty is applicable up to **300%** of the amount contravention*

(iv) *However **delay** of refund may be permitted beyond **180** days where **approval** from the RBI is specifically obtained.*

9. Permitted formats for the Carrying Business in India

● *Business in India can be undertaken in the following formats by a **non-resident***

(a) *By **incorporation** of a company for a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) in India*

(b) *By **set up** of a Liaison office, Project office or Branch office in India within scope of permitted activities by the RBI*

10. Pricing for the Equity Shares

(i) **Pricing for the Listed shares**

● *Price should **not** be lower than as worked out in accordance with the SEBI guidelines*

(ii) **Pricing for the Non Listed Shares**



- Pricing should **not** be lower than **fair** valuation of shares as worked out by SEBI registered category-I Merchant Banker or CA in accordance to Discounted Free Cash Flow Method (DFCFM)

(iii) Pricing for the Issue of shares under Preferential Allotment

- Price should **not** be lower than as worked out in accordance with the RBI guidelines laid down from time-to-time

11. Pricing for the Equity Shares under Swap of the Shares

- **Valuation** of the shares be made by SEBI registered category-I Merchant Banker in India or by registered Investment banker **outside** India

12. Approval from the RBI for Transfer of Share and Convertible Debentures

- **Approval** from the RBI is required for transfer of the shares and **convertible** debentures from a resident to **non**-resident of India by way of sale in the following circumstance irrespective of fact that **100%** FIs are permitted under the **automatic** route

- (a) Where price is **lower** than worked out in accordance to guidelines as issued by the RBI from time-to-time
- (b) Where **non**-resident is acquiring shares and convertible debentures against **deferral** of payment of the consideration

13. Approval from the Govt. of India

- **Approval** from Govt. of India is required for transfer of a capital instrument of a company who is engaged in a sector where **approval** from Govt. of India is needed.
- (i) Where transfer from a **non**-resident to a **non**-resident by way of sale or otherwise
 - (ii) Where transfer from a **resident** to a **non**-resident by way of sale or otherwise

14. Approval from the RBI for the Transfer of a Capital Instrument as Gift

- **Approval** from the RBI is required for transfer of a capital instrument by way of Gift from a resident to a **non**-resident of India



15. Transfer of the Equity Shares and Convertible Debentures

- (i) **Non-residents** are permitted for **fresh** purchasing or acquiring the **existing** equity shares from a resident and **non-resident** **after** satisfaction of the FIs Sectorial Cap policy under the **approval** or **automatic** route as case may be
- (ii) **General** permission is granted to the **non-residents** and **NRIs** for acquisition of equity shares by way of **transfer** where **100%** FIs are permitted under the **automatic** route but **after** satisfaction of the following terms and conditions
- (a) **Non-residents** **excluding** NRIs are permitted to transfer by way of sale or gift the equity shares or convertible debentures to other **non-residents** **including** NRIs
- (b) **NRIs** are permitted to transfer by way of sale or gift the equity shares or convertible debentures to **other** NRIs only
- Henceforth **Approval** from the RBI is required where transfer of the equity shares from a **NRI** to a **non-resident** of India
- (c) **Non-residents** are permitted to **transfer** the equity shares and convertible debentures by way of gift to the residents of India
- (d) **Non-residents** are permitted to **sell** the equity shares and convertible debentures through recognized stock exchange only
- (e) **Non-residents** are permitted to **sell** the equity shares and convertible debentures to a **resident** of India under **private** arrangement after satisfaction of certain guidelines as issued by the RBI
- (f) **Non-residents** are permitted to **transfer** the equity shares and convertible debentures under **buy back** or **capital reduction** scheme of an Indian Company
- However **General** Permission is **not** allowed where **transfer** the equity shares and convertible debentures are of the NBFCs, ARCs or CICs **etc.** from a **resident** to **non-resident** or **NRI**
- (g) Form FC-TRS is to be submitted to AD Category-I Bank within **60** days from the date of receipt of consideration and also **onus** for submission of form FC-TRS is on transferee or transferor who is a resident of India



(iii) KYC Norms

- (a) Sale consideration against the equity shares and convertible debentures are to be remitted through normal banking channels to the **non-residents**
- (b) Remittance receiving bank is required to satisfy the KYC guidelines as issued by the RBI

(iv) Escrow and special Accounts

- (a) General permission is permitted to open the Escrow and special accounts by the **non-resident** corporates for the **open** offer or exit offer
- (b) These facilities are available for issue of fresh equity shares and transfer of equity shares both

16. Approval from the RBI Not Required

(i) For transfer of equity shares from a Non Resident to a Resident of India

- (a) Where **original** and **resultant** both investments are in accordance to FIs policy and FEMA regulations i.e sectorial caps and minimum capitalization **etc.**
- (b) Where **pricing** for transaction is in accordance to SEBI regulations or the RBI guidelines i.e IPO, Book Building, Block Deal and Delisting **etc.**
- (c) Where **certificate** from a CA is obtained for compliance of SEBI regulations or the RBI guidelines

(ii) For Transfer of shares from a Resident to a Non Resident of India

- (a) Where transfer of Shares is requires **approval** from Govt. of India and same has been obtained and also **pricing** guidelines and documentation requirements as specified by the RBI are compliance
- (b) Where transfer of shares is requires satisfaction of the **pricing** guidelines as specified by SEBI (SAST) are compliance



(c) Where FIs policy and FEMA regulations are compliance and also **pricing** for transaction is in accordance to SEBI regulations or the RBI guidelines and **certificate** from CA is obtained for compliance of SEBI regulations, the RBI guidelines or **NOC** is obtained from the financial sector **regulator** for investee company

17. Processing for Approval by the RBI relating to a Gift to a non-resident

- The RBI is required to consider the following criterias against processing an application for **approval** relating to transfer of capital instruments by way of gift
 - (i) That **proposed** transferee (donee) is eligible to hold the capital instruments under the schedules **1, 4 and 5** of notification No. FEMA **20/2000**-RB dated **May 03, 2000**
 - (ii) That gift should **not** be exceeding **5%** of the paid up capital of an Indian company
 - (iii) That Sectorial **cap** in Indian company is **not** crossed
 - (iv) That donor and donee are **close relatives** in accordance to the Companies Act, **2013**
 - (v) That Value of transfer is **not** exceeding the limit as prescribed for **each** financial year under the LRS up to USD **2.5** Lac for a gift from residence individual to the non- resident **close** relative.

18. Direct and Indirect FIs in an Indian Company

- (i) Where an **investee** Indian company has **domestic investments** through an Indian company which is owned and controlled by a **non-resident** entity are treated as **indirect FIs**
- (ii) Indirect FIs can also may be in **multi layered structure** of the companies
- (iii) Mode of direct and indirect **both** FIs are the followings :-
 - (a) Equity Shares
 - (b) ADRs
 - (c) GDRs
 - (d) FCCBs



- (e) Fully, compulsorily and mandatorily **convertible** debentures and preference shares
- (f) Shares Warrants
- (g) Partly paid shares **etc.**

(iv) **Down Stream Investments (DIs)**

- (a) When Indian entity or investment vehicle is making down-stream investment in another Indian entity is treated **indirect FI** where investee **Indian** entity is having FIs.
- (b) Investee Indian entity is required to **inform** to DIPP within **30** days of investment and to the RBI within **30** days of allotment of the equity shares

19. Issue of Equity Shares against Conversion of the ECBs

- Indian Company is permitted to convert the ECBs **excluding deemed** ECBs into equity shares or **fully** compulsorily and mandatorily **convertible** preference shares under the **automatic** route **after** satisfaction of the following terms and conditions
 - (i) That activity of Indian company is covered under the **automatic** route for FIs or Company has already obtained an **approval** from Govt. of India for FIs where ever is applicable.
 - (ii) That FIs **after** conversion of ECBs in equity shares is within Sectorial **cap**, if any applicable
 - (iii) That **pricing** of shares is in accordance to SEBI regulations or the RBI guidelines
 - (iv) That **conversion** is in accordance to the requirement as prescribed under any **other** statute or regulation is in force
 - (v)(a) That **conversion** facility is available for the ECBs as availed under the **automatic** or **approval** route
 - (b) That **conversion** facility is available for the ECBs whether **due** for the payment or **not due** for the payment
 - (c) That **conversion** facility is available for the secured or **Unsecured** loans availed from the **non-resident** collaborators



20. Issue of Equity Shares Against Lump Sum Technical known How Fee or Royalty

- (i) Indian Company is permitted to issue the equity shares against lump sum technical Known How fee or royalty under the **automatic** route
- (ii) However this is permitted **after** satisfaction of the following certain terms and conditions
 - (a) Sectorial **Cap** is obeyed
 - (b) **Pricing** guidelines are followed
 - (c) Applicable tax law are compliance

21. Issue of Equity Shares against Import of Capital Goods, Machinery, Expenses ETC

- Indian Company is permitted to issue the Shares under the **automatic** route after satisfaction of the following terms and conditions
 - (i) That **pricing** guidelines, **Sectorial Cap** and rules and **regulations** of the RBI are compliance
 - (ii) That Issue the equity shares are **not** permitted against import of **second hand** machinery
 - (iii) That **import** of capital goods or machinery etc. is in accordance to Import and Export policy of Govt. of India as defined by **DGFT** or **FEMA** provisions relating to the imports
 - (iv) (a) That **valuation** of capital goods, machinery or equipments is made by an independent value from country of the imports
 - (b) That **importer** has submitted the copies of documents or certificates as issued by customs authorities for assessment for **fair value of the imports**
 - (v) That Application for **approval** if needed from Govt. of India should indicate the beneficial ownership, identity of importer Indian company and Foreign entity
 - (vi) That Application for **approval** if needed from Govt. of India is submitted within **180** days from the date of shipment of goods
 - (vii) Terms and Conditions are to be applied for **Pre-Operative** or **Pre-Incorporation** expenses
 - (a) **FIRC** is to be submitted for remittance of funds by foreign promoters for the expenditures as already incurred.



- (b) **Certification** is to be made by statutory auditor for **pre-incorporation** or **pre-operative** expenses
- (c) **Payments** are to be made by foreign investors to the company either directly or through bank account as opened by foreign investors in accordance to the FEMA Regulations
- (d) **Application** for approval if needed from Govt. of India is submitted within **180** days from the date of incorporation of company

(viii) **Following General Conditions are to be applied**

- (a) **Application** for approval if needed from Govt. of India be accompanied by a **special** resolution of the company
- (b) **Approval** if needed from Govt. of India is subject to pricing **guidelines** of the RBI and an appropriate tax **clearance** from Income Tax Dept.

22. Issue of the Right or Bonus Shares

- (i) Indian Company is permitted to issue the right or bonus shares to the **existing** non-resident shareholders subject to sectorial **cap** if any applicable
- (ii) However right or bonus shares are to be issued in accordance to SEBI (Issue of capital and Disclosure Requirements) Regulations, 2009 for the **listed** Companies
- (iii) **Pricing for Issue of the right Shares**
- (a) Price should **not** be lower than as **listed** at a stock exchange
- (b) Price for **non-resident** share holder should **not** be lower than as offered to resident shareholders for the **non-listed** shares

23. Issue an Additional Right Shares

- Indian Company is permitted to issue an **additional** right share out of the **unsubscribed** portion **after** satisfaction of the following terms and conditions
- (i) That issue of shares to the **non-residents** is within **FIs limit** if any applicable
- (ii) That Issue of shares to the non-residents is within sectorial **cap** if any applicable



24. Issue of the Shares under Merger, Demerger or Amalgamation

- (i) Merger, demerger or amalgamation was earlier governed by an order of the **high court** based on the Scheme as submitted by Company, now is governed by an order of the **NCLT**
- (ii) Transferee or new company is permitted to issue the equity shares to **non-resident** shareholders **after** an order of the **NCLT** and also **after** satisfaction of the following terms and conditions
 - (a) That **percentage** of shareholdings for the **non-residents** in transferee or new company is **not** exceeding the sectorial **cap**, if any applicable
 - (b) That transferor, transferee or new company is **not** engaged in the **prohibited** activities under the FIs policy as applicable in India

25. Issue of the Shares under Employee Stock Option Scheme (ESOP)

(i) By a Listed Indian Company

- (a) **Listed** Indian Company is permitted to issue the shares to its **non-residents employees** under ESOP in India and **Outside** India both
- (b) And also ESOP to Employees of it's joint venture (JV) or Wholly owned subsidiary (WOS) **outside** India.
- (c) However shares under ESOP are permitted to the **non-residents** and citizens of Bangladesh and Pakistan with an **approval** from the Govt. of India
- (d) Shares under ESOP are permitted to issue as direct or through a trust **after** satisfaction of the following terms and conditions
 - (da) That ESOP scheme is in accordance to regulations as issued by the SEBI
 - (db) And also **face** value of shares to non-residents is **not** exceeding **5%** of the paid up capital of an issuing company

(ii) By a Non Listed Indian Company

- (a) **Non listed** Indian Company is also permitted to issue the Shares under ESOP to **non-residents employees**



- (b) Shares under ESOP are permitted to the **non-** residents and citizens of Bangladesh and Pakistan with an **approval** from the Govt. of India

(iii) Legal Compliances

- Issuing Company is required to report to the RBI about the details of shares as issued under ESOP to the non-residents employees and also to submit Form No. FC-GPR within **30** days from the date of issue of shares

26. Pledging for the Equity Shares of an Indian Company

(i) Pledging by the non-resident Promoters for Indian Company

- (a) Promoters are permitted to pledge the shares for securing a **ECB** for an investee Indian Company
- (b) Authorized dealer bank is required to issue a **NOC** for pledging of the shares **after** satisfaction of the following terms and conditions
- (ba) That **ECBs** are in accordance to the FEMA regulations
- (bb) That **loan** agreement is signed by the lender and borrower both
- (bc) That **loan** agreement is required a **security clause** to create a charge on the financial securities
- (bd) That **borrower** has obtained a Loan Registration Number (LRN) from the RBI
- (be) That **pledging** is terminated with **maturity** of the ECBs
- (bf) That **invocation** of transfer of shares is in accordance to the **FIs policy** and also **directions** as issued by the RBI from time to time
- (bg) That statutory **auditor** has certified for utilization of the ECBs for permitted **end use** purpose only

(ii) Pledging by the non-resident shareholders for an Indian company

- **Non-residents** are permitted to **pledge** the shares to a bank in India to secure a **credit facility** for an **investee** Indian company for bonafide business purpose **after** satisfaction of the following terms and conditions
- (a) That transfer of shares **after invocation** of pledge is in accordance to FIs policy as applicable at time of creation of the pledge



- (b) That statutory **Auditor** has certified for utilization of loan proceeds for permitted **end use** purpose only
- (c) That investee Indian company is **obeyed** the SEBI disclosure norms
- (d) That **pledge of shares** in favor of lender bank is subject to section **19** of the Banking Regulation Act, **1949**

**(iii) Pledging by a Non-Resident Shareholder for a Non-Resident shareholder/
Promoter**

- **Non-** residents are permitted to **pledge** the shares in favour of bank **outside** India to secure a **credit** facility for a **non-resident** investor or promoter for the **bonafide** business purpose **after** satisfaction of the following terms and conditions
 - (a) That loan is **availed** from bank **outside** India
 - (b) That loan is **utilized** for bonafide business purpose outside India **not** for any investment as direct or indirect in India
 - (c) That investment **outside** India is out of loan proceeds only **not** for any **capital inflow** in India
 - (d) That transfer of shares **after invocation** of pledge is in accordance to FIs policy as applicable at time of creation of the pledge
 - (e) That **CA** or **CPA** has certified for utilization of loan proceeds for permitted **end use** purpose only

27. Computation for the Direct and Indirect FIs

- (i) Computation for **Direct FIs** in India is including **all** FIs by the **non-residents** in an Indian Company are treated as **direct FIs**

(ii) Computation of Indirect FIs in India

(a) Not Indirect FIs

- **FIs** through **Indian** Company are **not** treated **Indirect FIs** where Indian company is owned and controlled by a **resident** Indian entity

(b) Indirect FIs



- *FIs through **Indian** company are treated **indirect** FIs where Indian company is owned and controlled by a **non-resident** entity*

*(iii) **Computation of the total FIs in India***

- *Direct + Indirect FIs = Total FIs in India*

28. Transfer of shares from a Resident Indian entity to a Non Resident Entity

*(i) **Approval from the Govt. of India is required***

- (a) Where **Indian** company is being established with the FIs by a **non-resident** entity and also FIs are **not** permitted under the **automatic** route*
- (b) Where Control of an **Indian** Company is being **transferred** to **non-resident** entity due to transfer of shares or Issue of fresh shares through amalgamation, merger, demerger or acquisition and also FIs are **not** permitted under the **automatic** route*

*(ii) **Approval from Govt. of India is not required***

- *Where **100%** FIs are permitted under the **automatic** route in an Indian Company*

29. Downstream Investments by a Non Resident Entity

- (i) Specified form is to be submitted within **30** days against downstream investments as intimation to the RBI by an Indian Company which is **owned** and **controlled** by a non-resident entity.*
- (ii) **Downstream** investments are to be supported by a resolution of Board of Directors and the Shareholders agreement*
- (iii) (a) **Downstream** investments are to be made through fresh funds from **outside** India*
*(b) And also **No** leverage of the funds from the **domestic** market*
- (iv) Issue pricing and Valuation of the shares are to be in accordance to **guidelines** as issued by the SEBI and the RBI from time to time*



30. Remittance for the Sale Proceeds against Winding up or Liquidation

- (i) **Remittances** against sale proceeds of shares and Securities are to be made in to The Foreign Exchange Management (Remittance of Assets) Regulations, 2000
- (ii) Authorized dealer is required to remit the sale proceeds **after** deduction of **income tax** where FIs are held on **repatriation** basis
- (iii) Authorized dealer is also required to remit the winding up proceeds of the Company after receipt of the following documents
 - (a) **NOC** or Tax clearance certificate from the Income tax deptt, if any needed
 - (b) Statutory Auditor **certificate** for confirming that **all** liabilities in India are paid or adequately provided
 - (c) Statutory Auditor **certificate** for confirming that winding up is in accordance with provisions of the Companies Act, 2013
 - (d) Statutory Auditor **certificate** for confirming that **no** legal proceeding is pending in any court in India where winding up is **without** order of any court

31. Repatriation for the Dividend

- Dividend is permitted for repatriation **after** withholding of **Income Tax** and remittance are also be made in accordance to Foreign Exchange Management (current Account Transactions) Rules, 2000 as amended from time-to-time

32. Reporting for the FIs

- (i) **Reporting for the FIs Received against issue of Shares**
 - (a) Indian eligible entity is required to submit in specified Form within **30** days from the date of receipt of FIs in India
 - (b) Also to submit the copies of **FIRC** and **KYC** report on **non-resident** investors from overseas bank remitting the funds into India
 - (c) Also to obtain UIN from the RBI by an Indian Company



(ii) Reporting for Issue of the Shares

- (a) Indian Company is required to submit Form FC-GPR within **30** days from the date of issue of shares
- (b) Form FC-GPR is to be signed by a Managing Director, Director or Company Secretary and also be submitted to the RBI through authorised dealer bank
- (c) Form FC-GPR is to be submitted alongwith certificate as issued by a company secretary
- (ca) That requirement of the Companies Act, **2013** have been complied
- (cb) That terms and conditions of Govt. **approval**, if any have been complied **before** submitting to the RBI
- (cc) That company is **eligible** to issue the shares under the SEBI these Regulations and the RBI guidelines

(iii) Annual Return for Foreign liabilities and Assets (FLA) in the company

- (a) Indian Company is required to submit FLA annual return for the **FIs** and **ODIs** (Overseas Direct Investments)
- (b) FLA annual return is to be submitted up to July **15** of every year to the Director, Balance of payment statistics Division DSIM, the RBI through e-portal
- (c) FLA annual return is permitted to submit, based on **unaudited** financial statements up to July **15** of every year
- (d) However **further** FLA Annual return is to be submitted based on **audited** financial statements up to **September 30** where FLA annual return based on **unaudited** financial statements has already been submitted up to July **15**

33. Comparison between Foreign Investments (FIs) and Foreign Debts (FDs)

(i) Foreign Investments (FIs) in the Indian Entities

- (a) An **direct** and **indirect** FIs in capital of eligible Indian entities are treated FIs in India like investments in **domestic** companies and LLPs etc.
- (b) These foreign investments are to be with in composite sectorial limit or statutory **cap**, if any is applicable



(c) However these sectorial limit or statutory cap for the FIs are having **no nexus with the foreign debts**, like ECBs etc.

(ii) **Foreign Debts (FDs) in the Indian Entities**

(a) All foreign **debts** in eligible Indian entities are **treated FDs** in India

(b) These foreign debts are to be with in **limit**, as applicable for the debts

(c) Foreign debts like ECBs and FCCBs etc.

(d) Are having **no nexus** with the FIs sectorial **limit** or statutory cap until these debts are converted into the equity shares



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