

**Foreign Exchange Management (Transfer or issue of security by a person resident outside India)
Regulations, 2000**

Notification No. FEMA 20 /2000-RB dated 3rd May 2000

**RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
MUMBAI 400 001**

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations to prohibit, restrict or regulate, transfer or issue security by a person resident outside India, namely:

1. Short title and commencement :-

- (1) These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000.
- (2) They shall come into effect on the 1st day of June, 2000 .

2. Definitions :-

In these Regulations, unless the context requires otherwise, -

- (i) 'Act' means the Foreign Exchange Management Act,1999 (42 of 1999);
- (ii) 'Capital' means equity shares, preference shares, convertible preference shares, and convertible debentures;
- (iii) 'registered Foreign Institutional Investor (FII)' means the foreign institutional investor registered with SEBI;
- (iv) 'Government approval' means approval from the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India or as the case may be , Foreign Investment Promotion Board (FIPB) of the Government of India,
- (v) 'Indian company' means a company incorporated in India;
- (vi) 'Investment on repatriation basis' means an investment the sale 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;
- (vii) Joint Venture (JV) and Wholly Owned Subsidiary shall have the meanings respectively assigned to them in the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;
- (viii) 'Non-resident Indian (NRI)', 'Overseas Corporate Body (OCB)', shall have the meanings respectively assigned to them in the Foreign Exchange Management (Deposit) Regulations,2000.
- (ix) 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

- (x) 'Secretariat for Industrial Assistance' means Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion , Ministry of Commerce and Industry, Govt. of India;
- (xi) 'Transferable Development Rights (TDR)' shall have the same meaning as assigned to it in the Regulations made under sub-section (2) of section 6 of the Act;
- (xii) The words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Restriction on issue or transfer of Security by a person resident outside India :-

Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall issue or transfer any security:-

Provided that a security issued prior to, and held on, the date of commencement of these Regulations, shall be deemed to have been issued under these Regulations and shall accordingly be governed by these Regulations;

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

4. Restriction on an Indian entity to issue security to a person resident outside India or to record a transfer of security from or to such a person in its books :-

Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person:-

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary.

5. Permission for purchase of shares by certain persons resident outside India :-

- (1) A person resident outside India (other than a citizen of Bangladesh or Pakistan or Sri Lanka) or an entity outside India, whether incorporated or not, (other than an entity in Bangladesh or Pakistan) , may purchase shares or convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.
- (2) A registered Foreign Institutional Investor (FII) may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 2.
- (3) A non-resident Indian or an overseas corporate body may purchase shares or convertible debentures of an Indian company -
 - (i) on a stock exchange under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3; or/and
 - (ii) on non-repatriation basis other than under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 4.

- (4) A non-resident Indian or an overseas corporate body or a registered FII may purchase securities, other than shares or convertible debentures of an Indian company, subject to the terms and conditions specified in Schedule 5.

6. Acquisition of right shares :-

- (1) A person resident outside India may purchase equity or preference shares or convertible debentures offered on right basis by an Indian company which satisfies the conditions specified in sub-regulation (2).
- (2) An Indian company which satisfies the following conditions, may offer to a person resident outside India, equity or preference shares or convertible debentures on right basis, namely:-
- i) The offer on right basis does not result in increase in the percentage of foreign equity already approved, or permissible under the Foreign Direct Investment Scheme in terms of these Regulations;
 - ii) The existing shares or debentures against which shares or debentures are issued by the company on right basis were acquired and are held by the person resident outside India in accordance with these Regulations;
 - iii) The offer on right basis to the persons resident outside India is at a price which is not lower than that at which the offer is made to resident shareholders;
- (3) The right shares or debentures purchased by the person resident outside India shall be subject to same conditions including restrictions in regard to repatriability as are applicable to the original shares against which right shares or debentures are issued:-

Provided that the amount of consideration for purchase of right shares or debentures is paid by way of inward remittance in foreign exchange through normal banking channels or by debit to NRE/FCNR account, when the shares or debentures are issued on repatriation basis:-

Provided further that in respect of the shares or debentures issued on non-repatriation basis, the amount of consideration may also be paid by debit to NRO/NRSR/NRNR account.

7. Issue and acquisition of shares after merger or de-merger or amalgamation of Indian companies :-

- (1) Where a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of de-merger or otherwise of an Indian company, has been approved by a Court in India, the transferee company or, as the case may be, the new company may issue shares to the shareholders of the transferor company resident outside India, subject to the following conditions, namely:
- a) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank, or specified in these Regulations:-

Provided that where the percentage is likely to exceed the percentage specified in the approval or the Regulations, the transferor company or the transferee or new company may, after obtaining an approval from the Central Government, apply to the Reserve Bank for its approval under these Regulations.

- b) the transferor company or the transferee or new company shall not engage in agriculture, plantation or real estate business or trading in TDRs; and

- c) the transferee or the new company files a report within 30 days with the Reserve Bank giving full details of the shares held by persons resident outside India in the transferor and the transferee or the new company, before and after the merger/amalgamation/reconstruction, and also furnishes a confirmation that all the terms and conditions stipulated in the scheme approved by the Court have been complied with.

8. Issue of shares under Employees Stock Options Scheme to persons resident outside India :-

- (1) An Indian company may issue shares under the Employees' Stock Options Scheme, by whatever name called, to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust:-

Provided that

- a) the scheme has been drawn in terms of regulations issued under the Securities Exchange Board of India Act, 1992; and
 - b) face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid-up capital of the issuing company.
- (1) The Trust and the issuing company shall ensure that value of shares held by persons resident outside India under the scheme does not exceed the limit specified in clause (b) of sub-regulation (1).
 - (2) The issuing company shall furnish to the Reserve Bank , within thirty days from the date of issue of shares under the scheme, a report giving the following particulars/documents, -
 - i) names of persons to whom shares are issued under the scheme and number of shares issued to each of them;
 - ii) a certificate from the Company Secretary of the issuing company that the value of shares issued under the scheme does not exceed 5% of the paid up capital of the issuing company and that the shares are issued in compliance with the regulations issued by the SEBI in this behalf.

9. Transfer of shares and convertible debentures of an Indian company by a person resident outside India :-

- (1) Subject to the provisions of sub-regulation (2), a person resident outside India holding the shares or debentures of an Indian company in accordance with these Regulations, may transfer the shares or debentures so held by him, in compliance with the conditions specified in the relevant Schedule of these regulations.
- (2) i) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale, the shares or convertible debentures held by him to any person resident outside India:-

Provided that the person to whom the shares are being transferred has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

- ii) A non-resident Indian or an overseas corporate body may transfer by way of sale, the shares or convertible debentures held by him or it to another non-resident Indian or an overseas corporate body only.

- iii) A person resident outside India may transfer any security held by him, to a person resident in India by way of gift.

10. Prior permission of Reserve Bank in certain cases for transfer of security :-

A. Transfer by way of gift or sale by a person resident in India

A person resident in India who proposes to transfer to a person resident outside India: -

a) any security, by way of gift, shall make an application to the Reserve Bank furnishing the following information, namely:

- i) Name and address of the transferor and the proposed transferee
- ii) Relationship between the transferor and the proposed transferee
- iii) Reasons for making the gift.

b) any share/convertible debenture of an Indian company, by way of sale, shall obtain the Government approval for the transfer and thereafter apply to the Reserve Bank for its approval, which may be granted subject to such conditions as are considered necessary by Reserve Bank, including the price at which such sale may be made.

B. Transfer by way of sale not covered by Regulation 9 by a person resident outside India

(1) Transfer by way of sale not covered by Regulation 9 by a person resident outside India of the shares/convertible debentures held by him to a person resident in India, shall require prior permission of the Reserve Bank, for which application in form TS 1 may be made to the Reserve Bank.

(2) While considering the grant of permission, the Reserve Bank shall take into account the following factors, namely:

- (a) where the shares of an Indian company are traded on stock exchange,
 - i) the sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock exchange;
 - ii) if the transfer is other than that referred to in clause (i), the Reserve Bank will satisfy itself that the shares are proposed to be sold at a price arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 percent variation. Where, however, the shares are being sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the objective of passing management control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by upto a ceiling of 25 percent over the price arrived at as above,
- (b) where the shares of an Indian company are not listed on stock exchange or are thinly traded,

- i) if the consideration payable for the transfer does not exceed Rs.20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares, and
- ii) if the amount of consideration payable for the transfer exceeds Rs.20 lakh per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:
 - A) a price based on earning per share (EPS linked to the Price Earning (P/E) multiple ,or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher,
 - or
 - B) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen based trading system
 - c) where the shares are not listed on any stock exchange, at a price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a Merchant Banker in Category 1 registered with Securities and Exchange Board of India.

Explanation:

- i) A share is considered as thinly traded if the annualised trading turnover in that share, on main stock exchanges in India, during the six calendar months preceding the month in which application is made, is less than 2 percent (by number of shares) of the listed stock.
- ii) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares issued and paid up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares issued and paid up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.
- iii) For computing the price based on Earning Per Share, the earning per share as per the latest balance sheet of the company shall be used in conjunction with the average Price Earning Multiple of Bombay Stock Exchange National Index for the calendar month preceding the month in which application is made and Price Earning shall be discounted by 40 per cent.

11. Remittance of sale Proceeds :-

- (1) 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 Regulations and the conditions specified in the relevant Schedule.
- (2) 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 -

- a) the security was held by the seller on repatriation basis;
- b) either the security has been sold on a recognised stock exchange in India through a stock broker at the ruling market price as determined on the floor of the exchange, or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof; and
- c) a no objection/tax clearance certificate from the Income Tax authority has been produced.

(P.R. GOPALA RAO)
Executive Director

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Schedule I

[See Regulation (5) (1)]

Foreign Direct Investment Scheme

1. Purchase by a person resident outside India of equity/preference/convertible preference shares and convertible debentures issued by an Indian company

- (1) A person resident outside India referred to in sub-regulation (1) of Regulation 5, may purchase shares or convertible debentures issued by an Indian company up to the extent and subject to the terms and conditions set out in this schedule.
- (2) If the person purchasing the shares under this Scheme proposes to be collaborator or proposes to acquire the entire share holding of a new Indian company, he should obtain a prior permission of Central Government if he has a previous venture or tie-up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company issuing the shares is engaged.

2. Automatic Route of Reserve Bank for Issue of shares by an Indian company

- (1) An Indian company which is not engaged in any activity, or in manufacturing of item included in Annexure 'A' to this Schedule, may issue shares or convertible debentures to a person resident outside India, referred to in paragraph 1 upto the extent specified in Annexure B, subject to compliance with the provisions of the Industrial Policy and Procedures as notified by Secretariat for Industrial Assistance (SIA) in the Ministry of Commerce and Industry, Govt. of India, from time to time.

Provided that:

- i) the activity of the issuer company does not require an industrial licence under the provisions of the Industries (Development & Regulation) Act, 1951 or under the locational policy notified by Government of India under the Industrial Policy of 1991 as amended from time to time.
- ii) the shares or convertible debentures are not being issued by the Indian company with a view to acquiring existing shares of any Indian company.

Explanation:

A company which proposes to embark on expansion programme to undertake activities or manufacture items included in Annexure B to this schedule may issue shares or debentures out of fresh capital proposed to be issued by it for the purpose of financing expansion programme , upto the extent indicated in Annexure B, subject to compliance with the provisions of this paragraph.

- (2) A trading company incorporated in India may issue shares or convertible debentures to the extent of 51 per cent of its capital, to persons resident outside India referred to paragraph 1, subject to the condition that remittance of dividend to the shareholders outside India is made only after the company has secured registration as an Export/Trading/Star Trading /Super Trading House from the Directorate General of Foreign Trade, Ministry of Commerce, Government of India, New Delhi.
- (3) A company which is a small scale industrial unit and which is not engaged in any activity or in manufacture of items included in Annexure A, may issue shares or convertible debentures to a person referred to in paragraph 1, to the extent of 24% of its paid-up capital;

Provided that such a company may issue shares in excess of 24% of its paid up capital if

- (a) it has given up its small scale status;
- (b) it is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and
- (c) it complies with the ceilings specified in Annexure B.

- (4) Notwithstanding anything contained in clause (3) an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park may issue shares or convertible debentures to a person resident outside India referred to in paragraph 1 in excess of 24 per cent provided it complies with the ceilings specified in Annexure B.

3. Issue of shares by a company requiring the Government approval

A company which is engaged or proposes to engage in any activity specified in Annexure 'A' or which proposes to issue shares to a person resident outside India beyond the sectoral limits stipulated in Annexure 'B' or which is otherwise not eligible to issue shares to a person resident outside India, may issue shares to a person resident outside India referred to in paragraph 1, provided it has secured prior approval of Secretariat for Industrial Assistance or, as the case may be of the Foreign Investment Promotion Board of the Government of India and the terms and conditions of such an approval are complied with.

4. Issue of Shares by International offering through ADR and/or GDR

- (1) An Indian company may issue its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs),

Provided the Indian company issuing such shares

- (a) has an approval from the Ministry of Finance, Government of India to issue such ADRs and/or GDRs or is eligible to issue ADRs/ GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and
 - (b) is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations, and
 - (c) the ADRs/GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time.
- (2) The Indian company issuing shares under sub-paragraph (1), shall furnish to the Reserve Bank, full details of such issue in the form specified in Annexure 'C', within 30 days from the date of closing of the issue.
 - (3) The Indian company issuing shares against ADRs/GDRs shall furnish a quarterly return in the form specified in Annexure 'D' to Reserve Bank within fifteen days of the close of the calendar quarter.
 - (4) Pending repatriation or utilisation of foreign exchange resources raised in terms of clause (1) the Indian company may invest the foreign currency funds in -
 - (a) deposits with or Certificate of Deposits or other instruments of banks who have been rated not less than A1+ by Standard and Poor or P1 by Moody's for short term obligations,

- (b) deposits with branch outside India of an authorised dealer in India, and
- (c) treasury bills and other monetary instruments with a maturity or un-expired maturity of the instrument of one year or less.

5. Issue price

Price of shares issued to persons resident outside India under this Schedule, shall not be less than

- (a) the price worked out in accordance with the SEBI guidelines, where the issuing company is listed on any recognised stock exchange in India, and
- (b) fair valuation of shares done by a chartered accountant as per the guidelines issued by the erstwhile Controller of Capital Issues, in all other cases.

6. Dividend Balancing

Where a company is engaged in any of the industries in the consumer goods sector, specified in Annexure E, or in any other activity where the condition of dividend balancing has been stipulated in terms of the provisions of Industrial Policy and Procedures notified by Secretariat for Industrial Assistance, the cumulative outflow of foreign exchange on account of payment of dividend over a period of seven years from the date of commencement of commercial production to investors outside India shall not exceed cumulative amount of export earning of the company during those years.

Provided that

- (a) the restriction under this paragraph shall not apply
 - i) in respect of shares held in such a company by International Finance Corporation (IFC), the Deutsche Entwicklungsgesellschaft (DEG), the Commonwealth Development Corporation (CDC) and Asian Development Bank (ADB).
 - ii) to a company that has completed a period of seven years from the date of commencement of commercial production,
- (b) in case of an existing company that has issued fresh equity to persons resident outside India under these Regulations, the restriction shall apply to the fresh shares from the date of their issue.

7. Rate of Dividend on Preference Shares

The rate of dividend on preference shares or convertible preference shares issued under these Regulations shall not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the company in which issue of such shares is recommended.

8. Mode of payment for shares issued to persons resident outside India

A company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares -

- i) by inward remittance through normal banking channels, or
- ii) by debit to NRE/FCNR account of the person concerned maintained with an authorised dealer/authorised bank.

9. Report by the Indian company

(1) An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank,

A) not later than 30 days from the date of receipt of the amount of consideration, a report indicating:

- i) Name and address of the foreign investors
- ii) Date of receipt of funds and their rupee equivalent
- iii) Name and address of the authorised dealer through whom the funds have been received, and
- iv) Details of the Government approval, if any.

B) not later than 30 days from the date of issue of shares, a report in form FC-GPR together with,

(i) a certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that

- (a) all the requirements of the Companies Act, 1956 have been complied with;
- (b) terms and conditions of the Government approval, if any, have been complied with;

(c) the company is eligible to issue shares under these Regulations; and

(d) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 9;

(ii) a certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

10. Permission for retaining share subscription money received from persons resident outside India in a foreign currency account

Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, permit an Indian company issuing shares to persons resident outside India under this Schedule, to retain the subscription amount in a foreign currency account, subject to such terms and conditions as it may stipulate.

Annexure A
(See paragraph 2)

List of activities or items for which automatic route of Reserve Bank for Investment from Persons Resident Outside India is not available

1. Banking
2. NBFC's activities in Financial Services Sector
3. Civil Aviation
4. Petroleum including exploration/refinery/marketing
5. Housing & Real Estate Development sector for investment from persons other than NRIs/OCBs.
6. Venture Capital Fund & Venture Capital Company
7. Investing companies in Infrastructure & Service Sector
8. Atomic Energy & related projects
9. Defence and strategic industries
10. Agriculture (including plantation)
11. Print Media
12. Broadcasting
13. Postal services

Annexure B

(See paragraph 2)

Sectoral cap on Investments by Persons Resident Outside India

Sector	Investment Cap	Description of Activity/Items/Conditions
1. Telecommunications	49%	i) In basic, Cellular Mobile, paging and Value Added Services, and Global Mobile Personal Communications by Satellite subject to the licence from Department of Telecommunication of Government of India.
	100%	ii) In manufacturing activities
2. Housing and Real Estate	100%	ONLY NRIs/OCBs are allowed to invest in the areas listed below :
		a) Development of serviced plots and construction of residential premises
		b) Investment in real estate covering construction of residential and commercial premises including business centres and offices
		c) Development of townships
		d) City and regional level urban infrastructure facilities, including both roads and bridges.
		e) Investment in manufacture of building materials
		f) Investment in participatory ventures in (a) to (e) above
		g) Investment in housing finance institutions
3. Coal and Lignite	49%	i) in Public Sector Undertakings (PSU) and
	50%	ii) in other than PSUs
		a) Where Private Indian companies are setting up or operating power projects as well as coal or lignite mines for captive consumption;
		b) For setting up coal processing plants provided 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.
		c) For exploration or mining of coal or lignite for captive consumption .
4. Drugs & Pharmaceuticals	74%	For bulk drugs, their intermediaries and Formulations (except those produced by The use of recombinant DNA technology)
5. Hotel & Tourism	51%	i) Hotels include restaurants, beach resorts, and

			other tourist complexes providing accommodation and/or catering and food facilities to tourists.
			ii) Tourism related industry includes travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment amusement, sports, and health units for tourists and Convention/Seminar units and organisations.
6.	Mining	74%	Exploration and mining of diamonds and precious stones
		100%	Exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing
7.	Advertising	74%	Advertising sector
8.	Films	100%	Film industry (i.e. film financing, production, distribution, exhibition, marketing and associated activities relating to film industry) subject to the following:
			i) Companies with an established track record in films, TV, music, finance and insurance
			ii) The company should have a minimum paid up capital of US \$ 10 million if it is the single largest equity shareholder and atleast US \$ 5 million in other cases
			iii) Minimum level of foreign equity investment would be US \$ 2.5 million for the single largest equity shareholder and US\$ 1 million in other cases
			iv) Debt equity ratio of not more than 1:1 i.e., domestic borrowings shall not exceed equity
			v) Provisions of dividend balancing would apply.
9.	Any other sector/ activity (other than those included in Annexure A)	100%	-----

Annexure E

(See paragraph 6 of Schedule I)

List Of 22 Industries In Respect Of Which Dividend Balancing Is Applicable

1. Manufacture of food and food products
2. Manufacture of dairy products
3. Grain mill products
4. Manufacture of bakery products
5. Manufacture and refining of sugar (vacuum pan sugar factories)
6. Production of common salt
7. Manufacture of Hydrogenated oil (Vanaspati)
8. Tea processing
9. Coffee
10. Manufacture of beverages, tobacco and tobacco products
11. Distilling, rectifying and blending of spirits, wine industries, malt liquors and malt, production of country liquors and toddy
12. Soft drinks and carbonated water industry
13. Manufacture of cigar, cigarettes, cheroot and cigarette tobacco
14. Manufacture of wood and wood products, furniture and fixtures
15. Manufacture of leather and fur/leather products
16. Tanning, curing, finishing, embossing and japanning of leather
17. Manufacture of footwear (excluding repair) except vulcanised for moulded rubber or plastic footwear
18. Manufacture of footwear made primarily of vulcanised or moulded products
19. Prophylactics (rubber contraceptive)
20. Motor cars
21. Entertainment electronics(VCRs, Colour TVs, CD Players, Tape Recorders)
22. White goods(Domestic Refrigerators, Domestic Dishwashing Machines, Programmable Domestic Washing Machines, Microwave Ovens, Airconditioners).

SCHEDULE 2

{ See Regulation 5 (2) }

Purchase/sale of shares and/or convertible debentures of an Indian company by a registered Foreign Institutional Investor under Portfolio Investment Scheme

1. Purchase/sale of shares and/or convertible debentures

- (1) A registered Foreign Institutional Investor (FII) may, through the Securities and Exchange Board of India, apply to the Reserve Bank for permission to purchase the shares and convertible debentures of an Indian company under Portfolio Investment Scheme. The permission may be granted by Reserve Bank subject to such terms and conditions as may be considered necessary.
- (2) The registered FII permitted by the Reserve Bank under sub-paragraph 1, shall purchase the shares/convertible debentures of an Indian company through registered brokers on recognised stock exchanges in India.
- (3) The amount of consideration for purchase of shares / debentures shall be paid out of inward remittance from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorised dealer in India, in accordance with these Regulations.
- (4) The total holding by each FII/SEBI approved sub-account of FII shall not exceed 10% (ten per cent) of the total paid-up equity capital or 10% (ten per cent) of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all FIIs/sub-accounts of FIIs put together shall not exceed 24 per cent of paid-up equity capital or paid up value of each series of convertible debentures.

Provided that the limit of 24 per cent referred to in this paragraph may be increased to 40 per cent by the Indian company concerned by passing a resolution by its Board of Directors followed by passing of a special resolution to that effect by its General Body.

Explanation:

For arriving at the ceiling on holdings of FIIs, shares/ convertible debentures acquired both through primary as well as secondary market will be included. However, the ceiling will not include investment made by FII through off-shore Funds, Global Depository receipts and Euro-Convertible Bonds.

- (5) A registered FII may also be permitted to purchase shares/ convertible debentures of an Indian company through private placement/ arrangement, subject to the ceilings specified in sub-paragraph (4) of this paragraph.

2. Maintenance of account by a registered FII for routing transactions of purchase and sale of shares / convertible debentures

The Reserve Bank may, on application, permit a registered Foreign Institutional Investor to open a Foreign Currency Account and/or a Non-resident Rupee Account with a designated branch of an authorised dealer for routing the receipt of and payment for transactions relating to purchase and sale of shares / convertible debentures under this Scheme, subject to the following conditions:-

- i) The account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the shares / convertible debentures sold on stock exchange.

- ii) The funds in the account shall be utilised for purchase of shares / convertible debentures in accordance with the provisions of paragraph 1 of this Scheme or for remittance outside India.
- iii) The funds from Foreign Currency Account of the registered FII may be transferred to Non-Resident Rupee account of the same FII and vice a versa.

3. Remittance of sale proceeds of shares / convertible debentures

The designated branch of an authorised dealer may allow remittance of net sale proceeds (after payment of taxes) or credit the net amount of sale proceeds of shares / convertible debentures to the foreign currency account or a Non-resident Rupee Account of the registered Foreign Institutional Investor concerned.

4. Investment by certain other investors

- (1) Reserve Bank may, subject to such terms and conditions as it may consider necessary permit a domestic asset management company or portfolio manager who is registered with SEBI as a foreign institutional investor for managing the funds of a sub-account, to make investment under the Scheme on behalf of:-

- (i) a person resident outside India who is a citizen of a foreign state ,or
- (ii) a body corporate registered outside India ,

Provided such investment is made out of funds raised or collected or brought from outside India through normal banking channel,

- (2) The application to Reserve Bank for permission under sub-paragraph (1) may be made through SEBI.
- (3) Investments permitted to be made under sub-paragraph (1) shall not exceed 5% (five per cent) of the total paid-up equity capital or 5% (five per cent) of the paid-up value of each series of convertible debentures issued by an Indian company, and shall also not exceed the over-all ceiling specified in sub-paragraph (4) of paragraph 1 of this Schedule.

SCHEDULE 3

[See Regulation 5 (3) (i)]

Purchase/sale of shares and/or convertible debentures by an NRI /OCB on a Stock Exchange In India on repatriation and/or non-repatriation basis under Portfolio Investment Scheme

1. A Non-resident Indian (NRI) or an Overseas Corporate Body (OCB) may purchase/sell shares and/or convertible debentures of an Indian company, through a registered broker on a recognised stock exchange, subject to the following conditions :
 - i) the NRI/OCB designates a branch of an authorised dealer for routing his/its transactions relating to purchase and sale of shares/ convertible debentures under this Scheme, and routes all such transactions only through the branch so designated;
 - ii) the paid-up value of shares of an Indian company, purchased by each NRI or OCB both on repatriation and on non-repatriation basis, does not exceed 5 percent of the paid-up value of shares issued by the company concerned;
 - iii) the paid-up value of each series of convertible debentures purchased by each NRI or OCB both on repatriation and non-repatriation basis does not exceed 5 percent of the paid-up value of each series of convertible debentures issued by the company concerned;
 - iv) the aggregate paid-up value of shares of any company purchased by all NRIs and OCBs does not exceed 10 percent of the paid up capital of the company and in the case of purchase of convertible debentures the aggregate paid-up value of each series of debentures purchased by all NRIs and OCBs does not exceed 10 percent of the paid-up value of each series of convertible debentures;

Provided that the aggregate ceiling of 10 per cent referred to in this clause may be raised to 24 per cent if a special resolution to that effect is passed by the General Body of the Indian company concerned;
 - v) the NRI or OCB investor takes delivery of the shares purchased and gives delivery of shares sold;
 - vi) payment for purchase of shares and/or debentures is made by inward remittance in foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained in India if the shares are purchased on repatriation basis and by inward remittance or out of funds held in NRE/FCNR/NRO/NRNR/NRSR account of the NRI/OCB concerned maintained in India where the shares/debentures are purchased on non-repatriation basis;
 - vi) the Overseas Corporate Body (OCB) informs the designated branch of the authorised dealer immediately on the holding/interest of NRIs in the OCB becoming less than 60 per cent.

2. Report to Reserve Bank

The link office of the designated branch of an authorised dealer referred to in paragraph 1, shall furnish to the Chief General Manager, Reserve Bank of India (ECD), Central Office, Mumbai a report on daily basis giving the following details -

- a) Name of the Non resident Indian, or OCB.
- b) Company-wise number of shares and/or debentures and paid-up value thereof , purchased and/or sold by each NRI /OCB.

3. Remittance/credit of sale/maturity proceeds of shares and/or debentures

The net sale/maturity proceeds (after payment of taxes) of shares and/or debentures of an Indian company purchased by NRI or OCB under this Scheme, may be allowed by the designated branch of an authorised dealer referred to in paragraph 1,

- a) to be credited to NRSR account of the NRI or OCB investor where the payment for purchase of shares and/or debentures sold was made out of funds held in NRSR account, or
- b) at the NRI or OCB investor's option, to be credited to his/its NRO or NRSR account, where the shares and/or debentures were purchased on non-repatriation basis, or
- c) at the NRI or OCB investor's option, to be remitted abroad or credited to his/its NRE/ FCNR/ NRO/NRSR account, where shares and/or debentures were purchased on repatriation basis.

SCHEDULE 4

{ See Regulation 5 (3) (ii) }

Purchase and sale of shares/ convertible debentures by a Non-resident Indian (NRI) or an Overseas Corporate Body (OCB), on non-repatriation basis

1. Prohibition on purchase of shares/ convertible debentures of certain companies

No purchase of shares or convertible debentures of an Indian company shall be made under this Scheme if the company concerned is a Chit Fund or a Nidhi company or is engaged in agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

Explanation: For the purpose of this paragraph, real estate business shall not include development of township, construction of residential/ commercial premises, roads, bridges, etc.

2. Permission to purchase and/or sell shares/ convertible debentures of an Indian company

Subject to paragraph 1, a Non-resident Indian or an Overseas Corporate Body may, without any limit, purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue.

3. Method of payment for purchase of shares/ convertible debentures

The amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR /NRO/NRSR/NRNR account maintained with an authorised dealer or as the case may be with an authorised bank in India.

Provided that in the case of an NRI/OCB resident in Nepal and Bhutan, the amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid only by way of inward remittance in foreign exchange through normal banking channels.

4. Sale/ Maturity proceeds of shares or convertible debentures

- i) The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall be credited only to NRSR account where the purchase consideration was paid out of funds held in NRSR account and to NRO or NRSR account at the option of the seller where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO/NRNR account.
- ii) The amount invested in shares or convertible debentures under this Scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

SCHEDULE 5

[See Regulation 5 (4)]

Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India.

1. Permission to Foreign Institutional Investors for purchase of securities

A registered Foreign Institutional Investor may purchase, on repatriation basis, dated Government securities/treasury bills, non-convertible debentures/bonds issued by an Indian company and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognised stock exchange in India;

Provided that

- i) the FII shall restrict allocation of its total investment between equity and debt instruments (including dated Government Securities and Treasury Bills in the Indian capital market) in the ratio of 70:30, and
- ii) if the FII desires to invest upto 100 per cent in dated Government Securities including Treasury Bills, non-convertible debentures/bonds issued by an Indian company, it shall form a 100% debt fund and get such fund registered with SEBI.

2. Permission to Non-resident Indian and Overseas Corporate Body for purchase of securities

- (1) A Non-resident Indian or an Overseas Corporate Body may, without limit, purchase on repatriation basis,
 - i) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
 - ii) bonds issued by a public sector undertaking(PSU) in India;
 - iii) shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.
- (2) A Non-resident Indian or an Overseas Corporate Body may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings Certificates.

3. Method of payment of purchase consideration

- (1) A registered Foreign Institutional Investor who purchases securities under the provisions of this Schedule shall make the payment for purchase of such securities either by inward remittance through normal banking channels or out of funds held in Foreign Currency Account or Non-resident Rupee Account maintained by the Foreign Institutional Investor with a designated branch of an authorised dealer with the approval of Reserve Bank in terms of paragraph 2 of Schedule 2.
- (2) A Non-resident Indian or an Overseas Corporate Body who purchases securities on repatriation basis, under sub-paragraph (1) of paragraph 2 of this Schedule, shall make payment either by inward remittance through normal banking channels or out of funds held in his/its NRE/FCNR account.
- (3) A Non-resident Indian or an Overseas Corporate Body who purchases securities on non-

repatriation basis, under sub-paragraph (2) of paragraph 2 of this Schedule, shall make payment either by inward remittance through normal banking channels or out of funds held in his/its NRE/FCNR/NRO/NRSR/NRNR account.

4. Permission for Sale of Securities

A person resident outside India who has purchased securities in accordance with this Schedule may (a) sell such securities through a registered stock broker on a recognised stock exchange or (b) tender units of mutual funds to the issuer for repurchase or for payment of maturity proceeds or (c) tender Government securities/treasury bills to the Reserve Bank for payment of maturity proceeds.

5. Remittance/credit of sale/maturity proceeds

- (i) In the case of a registered Foreign Institutional Investor who has sold securities in accordance with paragraph 4, the designated branch of an authorised dealer referred to in sub-paragraph (1) of paragraph 3 may allow remittance of net sale/ maturity proceeds (after payment of taxes) or credit the net amount of sale/ maturity proceeds of such securities to the foreign currency account or Non-resident Rupee Account of the FII investor maintained in accordance with the provisions of paragraph 2 of Schedule 2.
- (ii) In the case of a Non-resident Indian or an Overseas Corporate Body who has sold securities in accordance with paragraph 4, the net sale/ maturity proceeds (after payment of taxes) of such securities, may be
 - a) credited only to NRSR account of the NRI investor where the payment for purchase of securities sold was made out of funds held in NRSR account, or
 - b) credited, at the NRI or OCB investor's option, to his/its NRO or NRSR account, where the payment for the purchase of the securities sold was made out of funds held in NRO account, or
 - c) remitted abroad or at the NRI or OCB investor's option, credited to his/its NRE/FCNR /NRO/NRSR/NRNR account, where the securities were purchased on repatriation basis in accordance with sub-paragraph (1) of paragraph 2 and the payment for purchase of the securities sold was made by inward remittance through normal banking channels or out of funds held in NRE/FCNR account.