CIRCULAR

CONSOLIDATED FDI POLICY CIRCULAR OF 2016 (EFFECTIVE FROM 7-6-2016)

CIRCULAR, DATED 7-6-2016

Chapter 1: Intent and Objective

1.1 Intent and Objective

1.1.1 It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Foreign Direct Investment, as distinguished from portfolio investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

1.1.2 The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No. FEMA 20/2000-RB dated May 3, 2000). These notifications take effect from the date of issue of Press Notes/Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. The procedural instructions are issued by the Reserve Bank of India vide A.P. (DIR Series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.3 The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on June 06, 2016 and reflects the FDI Policy as on June 07, 2016. This Circular accordingly will take effect from June 07, 2016 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

1.1.4 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to June 07, 2016, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

Chapter 2: Definitions

2.1 Definitions

2.1.1 'AD Category-I Bank' means a bank(Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.

2.1.2 'Authorized Bank' means a bank including a co-operative bank (other than an authorized dealer) authorized by the Reserve Bank to maintain an account of a person resident outside India.

2.1.3 'Authorized Dealer' means a person authorized as an authorized dealer under sub-section (1) of section 10 of FEMA.

2.1.4 'Authorized Person' means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under sub-section (a) of section 10 of FEMA to deal in foreign exchange or foreign securities.

2.1.5 'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants.
Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, 'warrant' includes Share Warrant issued by an Indian Company in accordance to provisions of the Companies Act, as applicable.

2.1.6 'Capital account transaction' means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 of FEMA.

2.1.7 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements. For the purposes of Limited Liability Partnership, 'control' will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.

2.1.8 'Depository Receipt' (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs). DRs are governed by Notification No. FEMA 330/ 2014-RB, issued by Reserve bank of India.

2.1.9 "Employees' Stock Option" means the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

2.1.10 'Erstwhile Overseas Corporate Body' (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs) ) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

2.1.11 'Foreign Currency Convertible Bond' (FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

2.1.12 'FDI' means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations,2000 (Original notification is available at https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174 Subsequent amendment notifications are available at https://rbi.org.in/Scripts/BS_FemaNotifications.aspx).

2.1.13 'FEMA' means the Foreign Exchange Management Act, 1999 (42 of 1999).

2.1.14 'FIPB' means the Foreign Investment Promotion Board constituted by the Government of India. Details of FIPB including filing application for FIPB can be accessed on the FIPB website www.fipb.gov.in.

2.1.15 'Foreign Institutional Investor' (FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations 1995.

2.1.16 'Foreign Portfolio Investor' (FPI) means a person registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

2.1.17 'Foreign Venture Capital Investor' (FVCI) means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital
2.1.18 'Government route' means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).

2.1.19 'Group Company' means two or more enterprises which, directly or indirectly, are in a position to:

(i) exercise twenty-six percent or more of voting rights in other enterprise; or

(ii) appoint more than fifty percent of members of board of directors in the other enterprise.

2.1.20 'Holding Company' would have the same meaning as defined in Companies Act, as applicable.

2.1.21 'Indian Company' means a company incorporated in India under the Companies Act, as applicable.

2.1.22 'Indian Venture Capital Undertaking' (IVCU) means an Indian company:

(i) whose shares are not listed in a recognised stock exchange in India;

(ii) which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.

2.1.23 'Investment Vehicle' shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.

2.1.24 'Investing Company' means an Indian Company holding only investments in other Indian company/ies, directly or indirectly, other than for trading of such

2.1.25 'Investment on repatriable basis' means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India and the expression 'investment on non-repatriable basis' shall be construed accordingly.

2.1.26 'Joint Venture' (JV) means an Indian entity incorporated in accordance with the laws and regulations in India in whose capital a non-resident entity makes an investment.


2.1.28 'Manufacture', with its grammatical variations, means a change in a non-living physical object or article or thing- (a) 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 (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

2.1.29 'Non-resident entity' means a 'person resident outside India' as defined under FEMA.

2.1.30 'Non-Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955. 'Persons of Indian Origin' cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be 'Overseas Citizen of India' cardholders'

2.1.31 A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

2.1.32 'Person' includes-

(i) an individual,

(ii) a Hindu undivided family,
(iii) a company,
(iv) a firm,
(v) an association of persons or a body of individuals whether incorporated or not,
(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
(vii) any agency, office, or branch owned or controlled by such person.

2.1.33 'Person of Indian Origin' (PIO) means a citizen of any country other than Bangladesh or Pakistan, if
   (i) he at any time held Indian Passport; or
   (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the
        Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
   (iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

2.1.34 'Person resident in India' means-
   (i) a person residing in India for more than one hundred and eighty-two days during the course of the
       preceding financial year but does not include-
       (A) A person who has gone out of India or who stays outside India, in either case-
           (a) for or on taking up employment outside India, or
           (b) for carrying on outside India a business or vocation outside India, or
           (c) for any other purpose, in such circumstances as would indicate his intention to stay outside
               India for an uncertain period;
       (B) A person who has come to or stays in India, in either case, otherwise than-
           (a) for or on taking up employment in India; or
           (b) for carrying on in India a business or vocation in India, or
           (c) for any other purpose, in such circumstances as would indicate his intention to stay in
               India for an uncertain period;

   (ii) any person or body corporate registered or incorporated in India,

   (iii) an office, branch or agency in India owned or controlled by a person resident outside India,

   (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

2.1.35 'Person resident outside India' means a person who is not a Person resident in India.

2.1.36 'Portfolio Investment Scheme' means the Portfolio Investment Scheme referred to in Schedules 2,
       2A & 3 of FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

2.1.37 'RBI' means the Reserve Bank of India established under the Reserve Bank of India Act, 1934.

2.1.38 'Resident Entity' means 'Person resident in India' excluding an individual.

2.1.39 'Resident Indian Citizen' shall be interpreted in line with the definition of 'person resident in India' as
       per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.

2.1.40 'SEBI' means the Securities and Exchange Board of India established under the

2.1.41 'SEZ' means a Special Economic Zone as defined in Special Economic Zone Act, 2005.

2.1.42 'SIA' means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.

2.1.43 'Sweat Equity Shares' means such equity shares as issued by a company to its directors or employees
       at a discount or for consideration other than cash, for providing their know-how or making available rights in
       the nature of intellectual property rights or value additions, by whatever name called.
2.1.44 'Transferable Development Rights' (TDR) means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

2.1.45 'Unit' shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

2.1.46 'Venture Capital Fund' (VCF) means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include an angel fund as defined under Chapter III-A of SEBI (AIF) Regulations, 2012.

Chapter 3: General Conditions on FDI

3.1 Eligible investors

3.1.1 A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy and sectors/activities prohibited for foreign investment.

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

3.1.3 OCBs have been derecognized as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route.

3.1.4 A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.

3.1.5 (i) Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may in terms of Schedule 2 and 2A of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be, respectively, invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

(ii) An Indian company which has issued shares to FIIs/FPIs under the FDI Policy for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR (Annexure-1).

(iii) A daily statement in respect of all transactions (except derivative trade) has to be submitted by the custodian bank in soft copy in the prescribed format directly to RBI and also uploaded directly on the OFRS web site (https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp).

3.1.6 Only registered FIIs/FPIs and NRIs as per Schedules 2,2A and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.

3.1.7 A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian company engaged in any activity mentioned in Schedule 6 of Notification No. FEMA 20/2000, including startups irrespective of the sector in which it is engaged, under the automatic route. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital
Fund) Regulations, 1996 or a Category- I Alternative Investment Fund registered under the SEBI (Alternative Investment Fund) Regulations, 2012.Such investments shall also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps, etc. The investment can be made in equities or equity linked instruments or debt instruments issued by the company (including start-ups and if a startup is organised as a partnership firm or an LLP, the investment can be made in the capital or through any profit-sharing arrangement) or units issued by a VCF or by a Category-I AIF either through purchase by private arrangement either from the issuer of the security or from any other person holding the security or on a recognised stock exchange. It may also set up a domestic asset management company to manage its investments. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations.

3.1.8 A Non-Resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be repatriable.

3.2 Eligible investee entities

3.2.1 FDI in an Indian Company

Indian companies can issue capital against FDI.

3.2.2 FDI in Partnership Firm/Proprietary Concern

(i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;

(a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.

(b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.

(c) Amount invested shall not be eligible for repatriation outside India.

(ii) Investments with repatriation option: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

(iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India. (iv) Restrictions: An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or print media.

3.2.3 FDI in Trusts

FDI is not permitted in Trusts other than in 'VCF' registered and regulated by SEBI and 'Investment vehicle'.

3.2.4 FDI in Limited Liability Partnerships (LLPs)

FDI in LLPs is permitted subject to the following conditions:

(i) FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

(ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

(iii) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

3.2.5 'Investment Vehicle'

An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or
any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

3.2.6 FDI in other Entities

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

3.3 Instruments of investments, issue/transfer of shares etc.

Types of instruments for investment and provisions relating to issue/transfer of shares are given at Annexure 2 & Annexure 3 respectively. Further, specific conditions of compliance for certain cases are given in Annexure-4.

3.4 Entry Routes for Investment

3.4.1 Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by FIPB.

3.4.2 Foreign investment in sectors/activities under government approval route will be subject to government approval where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerge, acquisition etc. or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerge, acquisition etc.

(v) It is clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11 (Investment Vehicles) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

(vi) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents.

(vii) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of
Security by Persons Resident Outside India) Regulations and such investment will also be deemed domestic investment at par with the investment made by residents.

3.5 Caps on Investments
3.5.1 Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. The caps in various sector(s) are detailed in Chapter 5 of this Circular.

3.6 Entry Conditions on Investment
3.6.1 Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 5 of this Circular.

3.7 Other Conditions on Investment besides Entry Conditions
3.7.1 Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

3.8 Foreign Investment into/downstream Investment by eligible Indian entities
3.8.1 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company/LLP, at every stage of investment, including downstream investment, have been detailed in Annexure-5.

3.8.2 For the purpose of this chapter,

(i) 'Downstream investment' means indirect foreign investment, by an eligible Indian entity, into another Indian company/LLP, by way of subscription or acquisition. Annexure-5 provides the guidelines for calculation of indirect foreign investment, with conditions specified in paragraph 1.2 (v).

(ii) 'Foreign Investment' would have the same meaning as in Annexure-5.

3.8.3 Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies (regardless of its ownership or control):

3.8.3.1 Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies/ LLP, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in paragraph 5.2.26 of this Circular.

3.8.3.2 Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

3.8.3.3 For undertaking activities which are under automatic route and without foreign investment linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to have infusion of foreign investment under automatic route. However approval of the Government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Note: Foreign investment into other Indian companies/LLPs would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

3.8.4 Downstream investment by an eligible Indian entity which is not owned and/or controlled by resident entity/ies
3.8.4.1 Downstream investment by an eligible Indian entity, which is not owned and/or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

Note: Downstream investment/s made by a banking company, as defined in clause(c) of Section 5 of the
Banking Regulation Act, 1949, incorporated in India, which is owned and/or controlled by non-residents/non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

3.8.4.2 Downstream investments by eligible Indian entities/LLPs will be subject to the following conditions:

(i) Such an entity is to notify SIA, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) Downstream investment by way of induction of foreign investment in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a share-holders agreement, if any;

(iii) Issue/transfer/pricing/valuation of capital shall be in accordance with applicable SEBI/RBI guidelines;

(iv) For the purpose of downstream investment, the eligible Indian entities making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/LLPs, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.8.3 and 3.8.4.1. For the purposes of foreign investment policy, internal accruals will mean as profits transferred to reserve account after payment of taxes.

3.9 Remittance, Reporting and Violation

3.9.1 The Government has provided elaborated scheme for remittance, reporting and violation of FDI policy. These are available at Annexure-6.

Chapter 4: Foreign Investment Promotion Board (FIPB)

4.1 Constitution of FIPB

4.1.1 FIPB comprises of the following Secretaries to the Government of India:

(i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson

(ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry

(iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry

(iv) Secretary to Government, Economic Relations, Ministry of External Affairs

4.1.2 The Board would be able to co-opt other Secretaries to the Central Government and top officials of financial institutions, banks and professional experts of Industry and Commerce, as and when necessary.

4.2 Levels of Approvals for Cases under Government Route

4.2.1 The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs.5000 crore.

4.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 5000 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).

4.2.3 The CCEA would also consider the proposals which may be referred to it by the FIPB/the Minister of Finance (in-charge of FIPB).

4.3 Cases which do not require Fresh Approval

4.3.1 Companies may not require fresh prior approval of the Government i.e. Minister-in-charge of FIPB/CCEA for bringing in additional foreign investment into the same entity, in the following cases:

(i) Entities the activities of which had earlier required prior approval of FIPB/Cabinet Committee on
Foreign Investment (CCFI)/CCEA and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;

(ii) Entities the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps;

(iii) Additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose; and

(iv) Additional foreign investment into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

4.4 Online Filing of Applications for FIPB/Government's Approval
4.4.1 Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at FIPB's website (http://finmin.nic.in/) and (http://fipb.gov.in).

Chapter 5: Sector Specific Conditions on FDI
5.1 Prohibited Sectors
FDI is prohibited in:

(a) Lottery Business including Government/private lottery, online lotteries, etc.
(b) Gambling and Betting including casinos etc.
(c) Chit funds
(d) Nidhi company
(e) Trading in Transferable Development Rights (TDRs)
(f) Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
(g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
(h) Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations(other than permitted activities mentioned in para 5.2).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

5.2 Permitted Sectors

(a) In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted up to100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities. Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

(b) Sectoral cap i.e. the maximum amount which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11(Investment Vehicle) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs
having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.

(c) Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.

(d) The sectors which are already under 100% automatic route and are without conditionalities would not be affected.

(e) Notwithstanding anything contained in paragraphs a) and c) above, portfolio investment, up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy.

(f) Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap.

(g) Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to amendments introduced through Press Note 8 (2015 Series).

(h) The onus of compliance of above provisions will be on the investee company.

Agriculture

5.2.1 Agriculture & Animal Husbandry

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables &amp; Mushrooms under controlled conditions;</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>(b) Development and Production of seeds and planting material;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Services related to agro and allied sectors</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Besides the above, FDI is not allowed in any other agricultural sector/activity

5.2.1.1 Other Conditions

I. The term "under controlled conditions" covers the following:

(i) '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.

(ii) In case of Animal Husbandry, scope of the term 'under controlled conditions' covers-

(a) Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems as prescribed by the National Livestock Policy, 2013 and in conformity with the
existing 'Standard Operating Practices and Minimum Standard Protocol.'

(b) Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.

(iii) In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers –

(a) Aquariums
(b) Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.

(iv) In the case of apiculture, scope of the term 'under controlled conditions' covers –

(a) Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.

5.2.2 Plantation Sector

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.2.1 Tea sector including tea plantations</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>(i) Tea sector including tea plantations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Coffee plantations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) Rubber plantations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iv) Cardamom plantations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v) Palm oil tree plantations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(vi) Olive oil tree plantations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Besides the above, FDI is not allowed in any other plantation sector/activity.

5.2.2.2 Other Condition

Prior approval of the State Government concerned is required in case of any future land use change.

Mining and Petroleum & Natural Gas

5.2.3 Mining

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.3.1 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 &amp; Regulation) Act, 1957.</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.3.2 Coal & Lignite

(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973.
(2) 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.

5.2.3.3

**Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities**

5.2.3.3.1

Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities **subject to** sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).

5.2.3.3.2 **Other Conditions**

(i) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions **viz.**:

(A) value addition facilities are set up within India along with transfer of technology;

(B) 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.

(ii) FDI 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.

**Clarification:**

(1) 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.

(2) 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 the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.

5.2.4 **Petroleum & Natural Gas**

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.4.1 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.</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>
Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.

**Manufacturing**

5.2.5 **Manufacturing:** Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.

5.2.6 **Defence**

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.6.1 Defence Industry subject to Industrial license under the Industries (Development &amp; Regulation) Act, 1951</td>
<td>49%</td>
<td>Automatic up to 49%</td>
</tr>
</tbody>
</table>

Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.

5.2.6.2 **Other Conditions**

(i) Infusion of fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.

(ii) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.

(iii) Foreign investment in the sector is subject to security clearance and guidelines of the M/o Defence.

(v) Investee company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.

**Services Sector**

5.2.7 **Broadcasting**

5.2.7.1 **Broadcasting Carriage Services**

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.7.1.1 Teleports (setting up of up-linking HUBs/Teleports);</td>
<td>100%</td>
<td>Automatic up to 49%</td>
</tr>
</tbody>
</table>

Government route beyond 49%

5.2.7.1.2 Direct to Home (DTW);

5.2.7.1.3 Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);

5.2.7.1.4 Mobile TV;

5.2.7.1.5 Headend-in-the Sky Broadcasting Service (HITS)
Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))

5.2.7.2 Broadcasting Content Services

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.7.2.1 Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information &amp; Broadcasting, for grant of permission for setting up of FM Radio stations</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>5.2.7.2.2</td>
<td>49%</td>
<td>Government</td>
</tr>
<tr>
<td>Up-linking of 'News &amp; Current Affairs' TV Channels</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>5.2.7.2.3</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>Up-linking of Non-'News &amp; Current Affairs' TV Channels/ Down-linking of TV Channels</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>5.2.7.3 Detailed guidelines on the Broadcasting Sector are given in Annexure-7.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5.2.8 Print Media

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.8.1 Publishing of newspaper and periodicals dealing with news and current affairs</td>
<td>26%</td>
<td>Government</td>
</tr>
<tr>
<td>5.2.8.2 Publication of Indian editions of foreign magazines dealing with news and current affairs</td>
<td>26%</td>
<td>Government</td>
</tr>
</tbody>
</table>

5.2.8.2.1 Other Conditions

(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.

(ii) Foreign investment would 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 & Broadcasting on 4.12.2008.

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.8.3 Publishing/printing of scientific and technical magazines/specialty journals/periodicals, subject to compliance with the legal framework as applicable and</td>
<td>100%</td>
<td>Government</td>
</tr>
</tbody>
</table>
guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.

5.2.8.4 Publication of facsimile edition of foreign newspapers: 100% Government

5.2.8.4.1 Other Conditions

(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.

(ii) 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, as applicable.

(iii) Publication of facsimile edition of foreign newspaper would 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 & Broadcasting on 31.3.2006, as amended from time to time.

5.2.9 Civil Aviation

5.2.9.1 Airports

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Greenfield projects</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>(b) Existing projects</td>
<td>100%</td>
<td>Automatic up to 74%</td>
</tr>
</tbody>
</table>

5.2.9.2 Air Transport Services

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline</td>
<td>49% FDI</td>
<td>Automatic</td>
</tr>
<tr>
<td>(b) Regional Air Transport Service</td>
<td>(100% for NRIs)</td>
<td></td>
</tr>
<tr>
<td>(2) Non-Scheduled Air Transport Service</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>(3) Helicopter services/seaplane services requiring DGCA approval</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.9.3 Other services under Civil Aviation sector

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Ground Handling Services subject to sectoral regulations and security clearance</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Definitions: The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.

For the purposes of the Civil Aviation sector:

(i) "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;

(ii) "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;
(iii) "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;

(iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;

(v) "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;

(vi) "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;

(vii) "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;

(viii) "Non-Scheduled air transport service" means any service which is not a scheduled air transport service and will include Cargo airlines;

(ix) "Cargo airlines" would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;

(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;

(xi) "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.

Other Conditions

(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.

(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.

(c) Foreign airlines are also allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:

   (i) It would be made under the Government approval route.
   (ii) The 49% limit will subsume FDI and FII/FPI investment.
   (iii) The investments so made would need to comply with the relevant regulations of 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.
   (iv) A Scheduled Operator's Permit can be granted only to a company:

      (a) that is registered and has its principal place of business within India;
      (b) the Chairman and at least two-thirds of the Directors of which are citizens of India; and
      (c) the substantial ownership and effective control of which is vested in Indian nationals.

   (v) 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

   (vi) 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.

Note: (i) The FDI limits/entry routes, mentioned at paragraph 5.2.9.2 (1) and 5.2.9.2 (2) above, are applicable
in the situation where there is no investment by foreign airlines.

(ii) The dispensation for NRIs regarding FDI up to 100% will also continue in respect of the investment regime specified at para (c)(ii) above.

(iii) The policy mentioned at para (c) above is not applicable to M/s Air India Limited.

5.2.10 Construction Development: Townships, Housing, Built-up Infrastructure

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.10.</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)

5.2.10.2

Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:

(A) (i) The investor will 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.

(ii) Notwithstanding anything contained at (A) (i) above, a foreign investor will 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 one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.

(B) 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, byelaws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

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

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

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

Note:

(i) It is clarified that FDI 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). "Real estate business" means dealing in land and immovable property with a view to earning profit there from 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. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.

(ii) Condition of lock-in period at (A) above will not apply to Hotels &Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.
(iii) Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.

(iv) It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.

(v) "Transfer", in relation to FDI policy on the 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
(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
(e) any transaction, by acquiring shares 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.

5.2.11 Industrial Parks

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Parks - new and existing</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.11.1 Other conditions for investment in Industrial Parks are at Annexure-8.

5.2.12 Satellites- establishment and operation

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO</td>
<td>100%</td>
<td>Government</td>
</tr>
</tbody>
</table>

5.2.13 Private Security Agencies

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Security Agencies</td>
<td>49%</td>
<td>Government</td>
</tr>
</tbody>
</table>

5.2.13.1 Other Conditions

(1) FDI in Private Security Agencies is subject to compliance with Private Security Agencies (Regulation) (PSAR) Act, 2005, as amended from time to time.

(2) For the purposes of FDI policy on the sector, terms "Private Security Agencies", "Private Security" and "Armoured Car Service" will have the same meaning as provided under PSAR Act, 2005, which is reproduced as under:

"Private Security Agency" means a person or body of persons other than a government agency, department or organisation engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property;

"Private Security" means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service;

"Armoured Car Service" means the service provided by deployment of armed guards along with armoured car and such other related services which may be notified by the Central Government or as the case may be, the State Government from time to time.
5.2.14 Telecom Services

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecom Services (including Telecom Infrastructure Providers Category-I)</td>
<td>100%</td>
<td>Automatic up to 49%</td>
</tr>
</tbody>
</table>

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) except Other Service Providers.

5.2.14.1 Other Condition

FDI in Telecom sector is subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except "Other Service Providers", which are allowed 100% FDI on the automatic route.

5.2.15 Trading

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.15.1 Cash &amp; Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.15.1.1 Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, 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 would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-Port/ex-bonded warehouse business sales and B2B e-Commerce.

5.2.15.1.2 Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):

(a) For undertaking WT, requisite licenses/registration/permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.

(b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:

(I) Entities holding sales tax/VAT registration/service tax/excise duty registration; or

(II) Entities holding trade licenses i.e. a license/regISTRATION certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/registration certificate/membership certificate, as the case may be, is itself/himself/herself engaged in a business involving commercial activity; or

(III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or
(IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.

Note: An entity, to whom WT is made, may fulfill any one of the 4 conditions.

(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. should be maintained on a day to day basis.

(d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture.

(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.

(f) A wholesale/cash & carry trader can undertake single brand retail trading, subject to the conditions mentioned in para 5.2.15.3. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms.

5.2.15.2 E-commerce activities

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-commerce activities</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

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

5.2.15.2.2 Definitions:

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

(ii) **E-commerce entity**- E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

(iii) **Inventory based model of e-commerce**- 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.

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

5.2.15.2.3 Guidelines for Foreign Direct Investment on e-commerce sector

(i) 100% FDI under automatic route is permitted in marketplace model of e-commerce.

(ii) FDI is not permitted in inventory based model of e-commerce.

5.2.15.2.4 Other Conditions

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

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

(iii) E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
(iv) E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory based model.

(v) An e-commerce entity will not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies.

(vi) In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.

(vii) In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.

(viii) In marketplace model, any warrantee/guarantee of goods and services sold will be responsibility of the seller.

(ix) E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.

(x) Guidelines on cash and carry wholesale trading as given in para 5.2.15.1.2 above will apply on B2B e-commerce.

Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

5.2.15.3 Single Brand product retail trading

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Brand product retail trading</td>
<td>100%</td>
<td>Automatic up to 49%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Government route beyond 49%</td>
</tr>
</tbody>
</table>

(1) Foreign Investment in Single Brand product retail trading 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.

(2) FDI in Single Brand product retail trading would be subject to the following conditions:

(a) Products to be sold should be of a 'Single Brand' only.

(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.

(c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.

(d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval.

(e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement
would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business i.e. opening of the first store. Thereafter, it would have to be met 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.

(f) Subject to the conditions mentioned in this Para, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

(3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.

(4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

Note:

(i) Conditions mentioned at Paras 5.2.15.3 (2) (b) & 5.2.15.3 (2) (d) will not be applicable for undertaking SBRT of Indian brands.

(ii) An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms.

(iii) Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers.

(iv) Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens.

(v) Government may relax sourcing norms for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.

5.2.15.4 Multi Brand Retail Trading

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi Brand Retail Trading</td>
<td>51%</td>
<td>Government</td>
</tr>
</tbody>
</table>

(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:

(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.

(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.

(iii) At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture
market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

(iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would 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 US $2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would 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 FDI is received. Thereafter, it would have to be met on an annual basis.

(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

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

(vii) Government will have the first right to procurement of agricultural products.

(viii) The above policy is an enabling policy only and the State Governments/Union Territories would 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/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. 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 & Promotion and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/regulations, such as the Shops and Establishments Act etc.

(ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

(x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

(2) List of States/Union Territories as mentioned in Paragraph 5.2.15.4(1)(viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Himachal Pradesh
6. Jammu & Kashmir
7. Karnataka
8. Maharashtra  
9. Manipur  
10. Rajasthan  
11. Uttarakhand  
12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

5.2.15.5 Duty Free Shops

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty Free Shops</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

(i) Duty Free Shops would mean shops set up in custom bonded area at International Airports/International Seaports and Land Custom Stations where there is transit of international passengers.  
(ii) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.  
(iii) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.

5.2.16 Railway Infrastructure

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Railway Infrastructure</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Construction, operation and maintenance of the following:  

Note:  
(i) Foreign Direct Investment in the abovementioned activities open to private sector participation including FDI is subject to sectoral guidelines of Ministry of Railways.  
(ii) Proposals involving FDI beyond 49% in 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.

5.2.17 Asset Reconstruction Companies

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.17.1 'Asset Reconstruction Company' (ARC)</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Note:  
The terms 'Union Territories' refers to Daman & Diu and Dadra and Nagar Haveli.
the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

5.2.17.2 Other Conditions

(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.

(ii) Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time. Similarly, investment by institutional/non-institutional investors will also be governed by the said Act, as amended from time to time.

(iii) The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.

(iv) FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank of India. FIIs/FPIs may be allowed up to 100 per cent of each tranche in SRs issued by ARCs, subject to directions/guidelines of Reserve Bank of India.

(v) All investments would be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time.

5.2.18 Banking- Private Sector

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.18.1 Banking- Private Sector</td>
<td>74%</td>
<td>Automatic up to 49%</td>
</tr>
</tbody>
</table>

5.2.18.2 Other Conditions

(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs/FPIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.

(2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

(3) The stipulations as above will be applicable to all investments in existing private sector banks also.

(4) Other conditions in respect of permissible limits under portfolio investment schemes through stock exchanges for FIIs/FPIs and NRIs, setting-up of a subsidiary by foreign banks and limits in respect of voting rights are at Annexure-9.

5.2.19 Banking- Public Sector

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.19.1 Banking- Public Sector</td>
<td>subject to Banking Companies (Acquisition &amp; Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.</td>
<td>20%</td>
</tr>
</tbody>
</table>

5.2.20 Credit Information Companies (CIC)

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.20.1 Credit Information Companies</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.20.2 Other Conditions
(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.
(2) Foreign investment is permitted subject to regulatory clearance from RBI.
(3) Such FII/FPI investment would be permitted subject to the conditions that:
   (a) A single entity should directly or indirectly hold below 10% equity.
   (b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and
   (c) FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

5.2.21 Infrastructure Company in the Securities Market

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.21.1 Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations</td>
<td>49%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.21.2 Other Conditions

(i) FII/FPI can invest only through purchases in the secondary market.
(ii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in commodity exchanges.
(iii) Foreign investment in commodity exchanges will be subject to the guidelines of the Central Government/SEBI from time to time.

Definitions:

(1) Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.

(2) For the purposes of this chapter,

   (i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.
   (ii) "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952
   (iii) "Association" means any-body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.
   (iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract.
   (v) "Commodity derivative" means-
       ♦ a contract for delivery of goods, which is not a ready delivery contract; or
       ♦ a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with SEBI by the Central Government, but does not include securities.

5.2.22 Insurance
5.2.22.1

(i) Insurance Company
(ii) Insurance Brokers
(iii) Third Party Administrators
(iv) Surveyors and Loss Assessors
(v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)

5.2.22.2 Other Conditions

(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 forty-nine percent of the paid up equity capital of such Indian Insurance company.

(b) The foreign investment up to forty-nine percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.

(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/approval from the Insurance Regulatory & Development Authority of India for undertaking insurance and related activities.

(d) An Indian Insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services/Insurance Regulatory and Development Authority of India as per the rules/regulation issued by them from time to time.

(e) Foreign portfolio investment in an Indian Insurance company shall be governed by the provisions contained in sub-regulations (2), (2A), (3) and (8) of Regulation 5 of FEMA Regulations, 2000 and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

(f) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.

(g) The foreign equity investment cap of 49 percent shall apply on the same terms as above to Insurance Brokers, Third Party Administrators, Surveyors and Loss Assessors and Other Insurance Intermediaries appointed under the provisions of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

(h) Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India 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 their primary (i.e., non-insurance related) business must remain above 50 percent of their total revenues in any financial year.

(i) The provisions of paragraphs (i) (b) and (d) of Annexure 9 relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.

(j) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as
provided in Notification No. G.S.R 115 (E), dated 19th February, 2015 issued by Department of Financial Services and regulations issued by Insurance Regulatory and Development Authority of India from time to time.

5.2.23 Pension Sector

**Sector/Activity** | % of Equity/FDI Cap | Entry Route
--- | --- | ---
Pension Sector | 49% | Automatic

**Other Conditions**

(i) Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.

(ii) Foreign Investment in Pension Funds will be subject to the condition that entities bringing in foreign equity investment as per Section 24 of the PFRDA Act shall obtain necessary registration from the Pension Fund Regulatory and Development Authority 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.

(iii) Wherever such foreign equity investment involves control or ownership by the foreign investor or, transfer of control or ownership of an existing pension fund from resident Indian citizens and/or Indian companies owned and controlled by resident Indian citizens to such foreign investing entities as a consequence of the investment, including through transfer of shares and or fresh issue of shares to Non-Resident entities through acquisition, amalgamation, merger etc., it would require Government approval in consultation with the Department of Financial Services, PFRDA and other entities concerned and the onus of compliance to these conditions will be on investee Indian pension fund company. The meaning of ownership and control would be as per the Foreign Direct Investment policy.

5.2.24 Power Exchanges

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.</td>
<td>49%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

5.2.24.1

**Other Conditions**

(i) FII/FPI purchases shall be restricted to secondary market only;

(ii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and

(iii) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/regulations; security and other conditionalities.

5.2.25 White Label ATM Operations

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Label ATM Operations</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

**Other Conditions**

(i) Any non-bank entity intending to set up WLAs should have a minimum net worth of Rs. 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times.

(ii) In case the entity is also engaged in any other 18 NBFC activities, then the foreign investment in the company setting up WLA, shall also have to comply with the minimum capitalization norms for
foreign investments in NBFC activities as provided in Para 5.2.26.2.

(iii) FDI in the WLAO will be subject to the specific criteria and guidelines issued by RBI vide Circular No. DPSS.CO.PD.No. 2298/02.10.002/2011-2012, as amended from time to time.

5.2.26 Non-Banking Finance Companies (NBFC)

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.26.1</td>
<td>100%</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Foreign investment in NBFC is allowed under the automatic route in only the following activities:

(i) Merchant Banking

(ii) Under Writing

(iii) Portfolio Management Services

(iv) Investment Advisory Services

(v) Financial Consultancy

(vi) Stock Broking

(vii) Asset Management

(viii) Venture Capital

(ix) Custodian Services

(x) Factoring

(xi) Credit Rating Agencies

(xii) Leasing & Finance

(xiii) Housing Finance

(xiv) Forex Broking

(xv) Credit Card Business

(xvi) Money Changing Business

(xvii) Micro Credit

(xviii) Rural Credit

5.2.26.2 Other Conditions

(1) Investment would be subject to the following minimum capitalisation norms:

   (i) US $ 0.5 million for foreign capital up to 51% to be brought upfront.

   (ii) US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront.

   (iii) US $ 50 million for foreign capital more than 75% out of which US $ 7.5 million to be brought upfront and the balance in 24 months.
(iv) NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US $ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by para 3.8.4.1, therefore, shall not apply to downstream subsidiaries.

(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.

(vi) Non-Fund based activities: US $0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:

It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

Note: The following activities would be classified as Non-Fund Based activities:

(a) Investment Advisory Services
(b) Financial Consultancy
(c) Forex Broking
(d) Money Changing Business
(e) Credit Rating Agencies

(vii) This will be subject to compliance with the guidelines of RBI.

Note: (i) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.

(ii) Leasing & Finance covers only financial leases and not operating leases. FDI in operating leases is permitted up to 100% on the automatic route.

(2) The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.

Others

5.2.27 Pharmaceuticals

<table>
<thead>
<tr>
<th>Sector/Activity</th>
<th>% of Equity/ FDI Cap</th>
<th>Entry Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.27.1 Greenfield</td>
<td>100%</td>
<td>Automatic</td>
</tr>
<tr>
<td>5.2.27.2 Brownfield</td>
<td>100%</td>
<td>Government</td>
</tr>
</tbody>
</table>

5.2.27.3 Other Conditions

(i) 'Non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.

(ii) The prospective investor and the prospective investee are required to provide a certificate along with the FIPB application as per Annexure-10.

(iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.

Note:

i. FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. The above mentioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.

ii. 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 -

(aa) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;
(ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;
(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;
(ad) supporting or sustaining life;
(ae) disinfection of medical devices;
(af) control of conception,

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;

b. an accessory to such an instrument, apparatus, appliance, material or other article;
c. a device which is 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 in vitro examination of specimens derived from the human body or animals.

iii. The definition of medical device at Note (ii) above would be subject to the amendment in Drugs and Cosmetics Act.

Annexures

Annexure-1

Form FC-GPR

Annexure-2

Types of Instruments

Annexure-3

Provisions Relating to Issue/Transfer of Shares

Annexure-4

Specific Conditions in Certain Cases

Annexure-5

Total Foreign Investment i.e. Direct and Indirect Foreign Investment in eligible Indian entities

Annexure-6

Remittance, Reporting and Violation
Annexure-7

Conditions for Broadcasting Sector

Annexure-8

Conditions for Industrial Parks

Annexure-9

Permissible limits under portfolio investment schemes through stock exchanges for FIIs/FPIs and NRIs

Annexure-10

Certificate to be Furnished by the Prospective Investor as well as the Prospective Recipient Entity

1. For details please refer to SEBI (FPI) Regulations, 2014 and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014 notified vide Notification No. FEMA.297/2014-RB dated March 13, 2014 and A.P. (DIR Series) Circular No.112 dated March 25, 2014. Wherever the words or acronyms FPI or FII occur in this document, the meaning and implications must be according to the above Regulations/Notifications, particularly during the transition period as prescribed in these Regulations. holdings/Securities.