



RESERVE BANK OF INDIA
Mumbai - 400 001

RBI/2016-17/88

A.P. (DIR Series) Circular No. 6

October 20, 2016

To

All Category - I Authorised Dealer Banks

Madam/Sir,

**Review of sectoral caps and simplification of Foreign Direct Investment
(FDI) Policy**

Attention of Authorised Dealer Category - I (AD Category-I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, notified by the Reserve Bank vide [Notification No. FEMA. 20/2000-RB dated 3rd May 2000](#) (FEMA 20), as amended from time to time.

2. The Central Government had reviewed the extant FDI Policy on various sectors and has made amendments in the Consolidated FDI Policy Circular 2015 vide Press Note No. 6(2015 Series) dated June 3, 2015, Press Note No. 7(2015 Series) dated June 3, 2015, Press Note No. 8(2015 Series) dated July 30, 2015, Press Note No. 11(2015 Series) dated October 1, 2015 and Press Note 12(2015 Series) dated November 24, 2015.

3. While Authorised Dealers and their constituents are advised to refer to the said amendments regarding the changes made, some of the salient features are as under:

- a. In all sectors where there is a limit/cap on foreign investment, such limit/cap shall be reckoned in a composite manner. In other words, "sectoral cap", i.e., the maximum amount which can be invested by foreign investors in an entity will include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedules 1, 2, 2(A), 3, 6, 8, 9 and 10 of FEMA (Transfer or Issue of Security by Persons Resident

Outside India) Regulations, 2000. Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts (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 under such composite limit/cap. 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 limit/cap.

- b. "Total foreign investment" in an Indian company will be the sum total of direct and indirect foreign investments.
- c. 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 with the sectoral conditions, as the case may be, provided such investment does not result in change in ownership leading to control of Indian entities [within the meaning of Regulation 14 (1) of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000] by 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 and the related Regulations under the Foreign Exchange Management Act 1999.
- d. The onus of compliance with the sectoral/statutory caps on foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.
- e. A company shall be 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 (LLP) 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.

- f. '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 agreement or voting agreement. For the purpose of LLP, 'control' shall mean right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over all the policies of the LLP.
- g. Foreign investment in LLP is permitted under the automatic route if the LLP is engaged in sector where 100% FDI is allowed and there are no attendant FDI linked performance conditionalities to the sector.
- h. Foreign investment by way of swap of shares has been permitted provided the resident company in which the investment is made is engaged in an automatic route sector subject to the condition that irrespective of the amount, valuation of the shares involved in the swap arrangement will have to be made by a Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.
- i. In terms of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2016 notified vide [Notification No. FEMA 361/2016-RB dated February 15, 2016](#), a Non-resident Indian (NRI) has been permitted to purchase or sell shares, convertible preference shares, convertible debentures and warrants of an Indian company or units of an investment vehicle, on repatriation basis (under Schedule 3 to FEMA 20) and non-repatriation basis (under schedule 4 to FEMA 20) . Investment by an NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRI, on non-repatriation basis under Schedule 4 of notification *ibid*, will be deemed to be domestic investment at par with the investment made by residents.
- j. Foreign investment up to 100 percent under the automatic route has been permitted in the plantation sector which includes tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil

tree plantations and olive oil tree plantations. There have been changes in the foreign investment cap in other sectors. The updated Annex-B to schedule-1 has been notified vide [Notification No. FEMA 362/2016-RB dated February 15, 2016](#).

- k. "Real estate business" shall mean dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent income on lease of the property, not amounting to transfer, will not amount to "real estate business".
- l. Manufacturing has been given a precise definition and foreign investment up to 100% under the automatic route is permitted in manufacturing subject to the conditions of the FDI policy and the provisions of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.
- m. An entity engaged in single brand retail trading operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

4. To effect these changes the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 have been amended through the Foreign Exchange (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015 notified vide [Notification No. FEMA.354/2015-RB dated October 30, 2015](#), (c.f. G.S.R No.823 (E) dated October 30, 2015), the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2016 notified vide [Notification No. FEMA 361/2016-RB dated February 15, 2016](#) (c.f. G.S.R No 165(E) dated February 15, 2016) and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016 notified vide [Notification](#)

[No. FEMA 362/2016-RB dated February 15, 2016](#), (c.f. G.S.R No. 166 (E) dated February 15, 2016).

5. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Shekhar Bhatnagar)
Chief General Manager-in-Charge