

GRC BULLETIN

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RBI

Master Direction – Foreign Investment in India

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CORPORATE LAWS

Authority

Reserve Bank of
India

Circular Date

Jan 20, 2024

Circular Number

RBI/FED/2017-18/60
FED Master Direction
No.11/2017-18

Effective Date

Jan 20, 2024

RBI - MASTER DIRECTION – FOREIGN INVESTMENT IN INDIA

Applicability:

Applicable to foreign investors, Indian companies receiving foreign investment, financial institutions, legal and compliance advisors, startups, LLPs, and businesses in regulated sectors

Foreign investment in India is governed under the Foreign Exchange Management Act (FEMA), 1999, and the Foreign Exchange Management (Non-Debt Instruments) Rules (NDI Rules), 2019. The Reserve Bank of India (RBI) administers these rules, providing directions, clarifications, and instructions for implementation.

Key Updates & Compliance Considerations

- **Mode of Payment:** Payments for equity transfers must be routed through banking channels or repatriable accounts under FEMA 2016. Non-repatriable investments can be paid through NRO accounts.
- **Equity Instruments:** Foreign investment in equity instruments, such as equity shares, convertible debentures, and preference shares, must meet specific criteria, including upfront payment and timeframes for balance payments.
- **Prohibited Sectors:** Sectors like lottery, gambling, atomic energy, and certain railway operations are prohibited for foreign investment. Entities from countries sharing a land border with India, like Pakistan, face restrictions.

Foreign Investment Routes and Sectoral Caps

- **Automatic Route:** No government approval is required for foreign investment unless the investment is in a sector with specific restrictions.
- **Government Route:** Approval is required for investments in certain sectors, processed via the Foreign Investment Facilitation Portal (FIFP).
- **Sectoral Caps:** Specific investment limits apply to sectors like financial services, which require government approval, while others allow 100% foreign investment under the automatic route.

Special Provisions for Foreign Investors

- **Investor's Residential Status:** Non-residents can hold equity instruments on a non-repatriable basis after leaving India. Similarly, equity inherited by non-residents is non-repatriable.



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- **Gift Transfers:** NRIs/OCIs can transfer equity as gifts, provided sectoral caps and conditions are met, and the transferee holds the investment non-repatriably.

Transfers of Equity Instruments

- **NRIs/OCIs Transfers:** Transfers from NRIs/OCIs to non-residents require compliance with sectoral caps and pricing guidelines.
- **Swap of Equity Instruments:** Equity swaps between residents and foreign residents are allowed under specific regulations, including government approval when required.
- **Pricing Guidelines:** Equity instruments must comply with SEBI pricing guidelines, and special provisions apply to convertible instruments to ensure conversion prices align with fair market value.
- **Deferred Payment & Escrow Arrangements:** Deferred payments or escrow arrangements are permitted, with specific conditions, for equity transfers.

Downstream Investment Regulations

- **Conditions for Downstream Investment:** Indian entities receiving indirect foreign investment must comply with entry routes, sectoral caps, and pricing guidelines. Investments in LLPs must adhere to conditions specified in the automatic route and sectoral guidelines.
- **Prohibition on Borrowed Funds:** Downstream investments cannot use borrowed funds from domestic markets but may utilize internal accruals.
- **Compliance Responsibility:** Indian companies must ensure compliance with FEMA provisions, obtaining a certificate from the statutory auditor.

Equity Instruments with Optionality Clauses

Investments involving optionality clauses are allowed, subject to compliance with pricing guidelines, lock-in periods, and sector-specific requirements.

Reporting & Compliance

- All foreign investments are subject to applicable tax and remittance guidelines.
- **Clarifications:** Investors can request clarification on foreign investment rules through Authorized Dealer (AD) banks.

SOURCE: [Click Here for more details](#)



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