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[FDI POLICY]

INTRODUCTION OF COMPOSITE FOREIGN INVESTMENT CAPS

SR. NO.	AS PER EXISTING POLICY	AMENDED POLICY (16.07.2015 – UNION CABINET MEETING)	IMPACT (OUR VIEW)
1.	**3.1.4 (i):** An FII / FPI may 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 / QFI 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 / QFI investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.	**Para 3.1.4 (i):** ~~**An FII / FPI**~~ An **FII/FPI/QFI** (**Schedule 2, 2A and 8** of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be) may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII / FPI / **QFI** below 10 percent of the capital of the company and the aggregate limit for FII/FPI/QFI investment to 24 percent of the capital of the company. This aggregate limit of 24 percent 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/ QFI **investment,** ~~in the FDI and Portfolio Investment Scheme, should be within the above caps~~ **individually or in conjunction with other kinds of foreign investment will not exceed**	As per the amendment now the limit upto which foreign investment can be increased *cannot exceed sectoral cap / statutory ceiling* as applicable to that Indian Company. Earlier, aggregate FII / FPI / QFI investment in the FDI and Portfolio Investment Scheme have separate caps, but now the aggregate FII / FPI / QFI investment, individually or in combine shall <u>*not exceed*</u> sectoral/statutory cap. By such an amendment, the Government has removed the flaws existed in the FDI policy. *On the basis of clarification issued by DIPP, aforesaid composite cap limit is not applicable to Defence and Banking Industry. Very soon, DIPP/RBI is supposed to come out with detailed guidelines in this behalf.*

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		sectoral/statutory cap.	
2.	**Para 3.6.2 (vi):** It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares / debentures, regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.	**Para 3.6.2 (vi):** It is also clarified that Foreign investment shall include all types of foreign investments, ~~i.e. FDI, investment by FIIs, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB)~~ **direct** and **indirect**, regardless of whether the said investments have been made under **Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs)** *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.**	Earlier, instruments such as FCCBs, ADR and GDRs were treated as a part of foreign investment from the date of their issuance. However, with the amendment, such FCCBs, ADR and GDRs instruments shall not form part of the foreign investment until their conversion.
3.	**Para 4.1.2:** For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall	**Para 4.1.2:** For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all	Earlier, instruments such as FCCBs, ADR and GDRs were treated as a part of foreign investment from the date of their issuance. However, with

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	include all types of foreign investments i.e. FDI; investment by FIIs (holding as on March 31); FPIs (holding as on March 31); QFIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.	types of foreign investments ~~i.e. FDI; investment by FIIs (holding as on March 31); FPIs (holding as on March 31); QFIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures~~ regardless of whether the said investments have been made under **Schedule 1 (FDI), 2 (FII holding as on March 31), 2A (FPI holding as on March 31), 3 (NRI), 6 (FVCI), 8 (QFI holding as on March 31), 9 (LLPs) and 10 (DRs)** of FEMA (Transfer or Issue of Security by Persons Resident Outside India) ~~Regulations,2000.~~**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.**	the amendment, such FCCBs, ADR and GDRs instruments shall not form part of the foreign investment until their conversion.

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4.	**Para 6.2:** 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 to 100% 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.	**Para 6.2:** **i.** In the ~~following~~ sectors / activities ~~FDI~~ **mentioned in this paragraph, foreign investment up** to the limit indicated against each sector / activity is allowed, subject to **the conditions of the extant policy on specified sectors and** applicable laws / regulations; security and other conditionalities. In sectors/activities not listed ~~below, FDI~~ therein, foreign investment is permitted up to 100 percent 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	As per the amendment the word foreign investment has been replaced for the word FDI because foreign investment includes the investment made through FDI, Portfolio Investment Scheme and other direct and indirect investments.

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		requirement. ii. **Sectoral cap that is to say the maximum amount which can be invested by foreign investor, 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), 8 (QFI), 9 (LLPs) and 10 (DRs) 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.**	

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		iii. 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. **iv. The sectors which are already under 100 percent automatic route and are without conditionalities *would not be affected*.** **v. Notwithstanding anything contained in paragraphs (i) and (iii) above portfolio investment, upto aggregate foreign investment level of 49 percent, will not be subject to either government approval or compliance of sectoral conditions, as**	

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		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, **vi. Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap.** **vii. Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to these amendments.** **viii. The onus of compliance of above provisions will be on the investee com**	

*Changes made by amendment have been either struck off or marked in bold.

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