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FOREIGN DIRECT INVESTMENT IN INDIA

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CA Vijay K. Gupta

Portfolio Investments:

a. Foreign Investments under Portfolio Investment Scheme (PIS) by FIIs & FPIs (Schedules 2 & 2A), in other Securities (Schedule 5)

b. Foreign Investments under Portfolio Investment Scheme (PIS) by NRIs on repatriation basis (Schedule 3) and on non-repatriation basis (Schedule 4)

1. Introduction

1.1 As per June '14 Report of Dr. Arvind Mayaram Committee on rationalising FDI/FII Definition, 'Portfolio Investment' (by FIIs/FPIs and NRIs) is distinctive from Foreign Direct Investment because of nature of funds raised, largely anonymous relationship between issuers and holders, and degree of trading liquidity in instruments, and it covers, but is not limited to securities traded on organised or other financial markets. 'Portfolio Investment Scheme' ('PIS') is as referred to in Schedules 2 (FIIs), 2A (FPIs) & 3 (NRIs) of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 ('FEMA 20') – (reference to Schedule/regulation number is of FEMA 20).

1.2 As per First edition of Foreign Portfolio Investor Survey 2016-17 by PwC[1], 'Views gathered from over 200 participants from across globe suggest that India is one of the most attractive destinations for FPIs, with a favourable trade and settlement cycle, moderate tax rates and adequate investment limits.

1.3 As per August '16 Press Release by PRIME Database[2], based on analysis of shareholding patterns of 1,517 of total 1,532 companies listed at NSE for quarter ending June 2016, 'percentage holding of FIIs was 20.09% (` 20.13 lakh crore by value on back of net inflows of ` 14,671 crore). On overall basis, FII holding went up in 437 companies in last one year with average stock price return of these companies being a huge 37%. FII holding went down in 577 companies with average stock price return of these companies was 18.32%'.

1.4 On the whole Foreign Exchange regulations have been substantially amended/relaxed/simplified in recent past to attract much needed foreign exchange for the country and simultaneously making India an attractive destinations for foreign investment.

1.5 (a) PIS regime has been substituted *vide* amended Schedules 2A and 3 on March 19, 2014 and February 15, 2016 respectively.

1. http://www.pwc.in/assets/pdfs/trs/fpi/fpi-survey.pdf
2. http://www.primedatabasegroup.com/newsroom/PR-325.pdf

(b) Purchase of securities (other than shares or Convertible Debentures) by FPIs has been substituted *vide* amended Schedule 5 on March 19, 2014.

(c) Investment by FPIs and NRIs in Investment Vehicles has been introduced *vide* Schedule 11 on February 15, 2016.

(d) Acquisition by NRIs on non-repatriation basis has been substituted *vide* amended Schedule 4 on February 15, 2016.

1.6 With the liberalisation of investment under Schedule 4, a lot of opportunities/structuring options are now available to NRIs for making investments in India vis-a-vis investment under FDI.

1.7 Masala Bonds Scheme (Rupee denominated bonds) has been introduced under FEMA 3 as an alternative for raising overseas debt through listed NCDs to FPIs, and Foreign currency denominated borrowing/ECB.

1.8 Listed non-convertible debentures/bonds issued by an Indian company (including a private limited company) – through public issue or on private placement basis under SEBI (Issue and Listing of Debt Securities) Regulations, 2008, on Wholesale Debt Market segment of BSE, has been quite popular – with assured return, no sector restrictions, no ECB restrictions, Secured or Unsecured etc. as an alternative to investment under FDI, and borrowings under ECB regime.

2. New regime and definition of NRI/PIO

2.1 NRI means an individual resident outside India who is citizen of India or is an 'Overseas Citizen of India' ('OCI') cardholder within the meaning of section 7(A) of the Citizenship Act, 1955. An OCI Cardholder means:

(a) Any person of full age and capacity,(a major who is a citizen of another country),–

(i) But was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) But was eligible to become a citizen of India at the time of the commencement of the Constitution or

(iii) But belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) Who is a child or a grandchild or a great grandchild of such a citizen; or

(b) A person, who is a minor child of a person mentioned in clause (a); or

(c) A person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) Spouse of foreign origin of a citizen of India or spouse of foreign origin of an OCI Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section.

2.2 No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as Central Government may prescribe, may be a OCI Cardholder.

2.3 Existing OCI Cardholders shall be deemed to be OCI Cardholders, which means persons registered as such under Notification Number 26011/4/98 F.I., dated 19th August, 2002 issued by Central Government.

2.4 The Central Government has specified following rights to which persons registered as OCI shall be entitled:

(a) Grant of multiple entry lifelong visa for visiting India for any purpose;

(b) Exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India; and

(c) Parity with NRIs in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

2.5 Prior to above amendment in Citizenship Act, 1955 w.e.f. June 28, 2005, from FEMA perspective, NRI meant a person resident outside India who is a citizen of India or is a Person of Indian Origin. 'Person of Indian Origin' meant a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if a) he at any time held Indian passport; or b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b) as PIO. Now, definition of NRI under FEMA has been aligned to amended Citizenship Act.

3. PIS for FPIs under Schedule 2A on repatriation basis

3.1 With the enforcement of SEBI (Foreign Portfolio Investors) Regulations, 2014 from June 1, 2014, erstwhile SEBI (Foreign Institutional Investors) Regulations, 1995 has been repealed. Erstwhile FIIs, Sub-accounts (Schedule 2) and Qualified Foreign Investor (QFIs) (Schedule 8) regimes are merged into a new investor class FPIs under Schedule 2A. FIIs/SAs (deemed FPIs) may continue to purchase through offer both through primary as well as secondary market/ private placement, till the expiry of the block of three years of its registration as FII or SA, or until it obtains a Registration CoR as FPI, whichever is earlier.

3.2 Qualified Foreign Investor ('QFI') was permitted to purchase equity shares of Indian company as specified in Schedule 8. At present, QFI is not permitted, as a separate category for a period of one year from the date of commencement of FPI Regulations or until it obtains CoR as FPI, whichever is earlier. Erstwhile QFIs did not include FIIs/ SAs/FVCI. An NRI could not make investments simultaneously through the QFI route and PIS route.

3.3 All investments made by FIIs/SAs/QFIs prior to registration as FPI shall continue and taken into account for computation of aggregate limit under Schedule 2A.

3.4 NRI/PIO is not eligible to make investments as an FPI. However, a fund having NRIs as its investors is not prohibited from obtaining registration as FPI. A company which is majority owned by NRIs/PIOs shall not be allowed to make investments as FPI.

3.5 Eligible criteria for FPI, *inter alia*, includes being a person

(a) Not resident in India under Income-tax Act;

(b) Resident of country whose securities market regulator is signatory to International Organisation of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Board;

(c) Applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;

(d) Not resident in a country identified in the public statement of Financial Action Task Force as:

(i) A jurisdiction having a strategic Anti Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

(ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

(e) Not a non-resident Indian;

(f) Legally permitted to invest in securities outside the country of its incorporation or establishment or place of business;

(g) Applicant is authorised by its Memorandum of Association and Articles of Association or equivalent document(s) or agreement to invest on its own behalf or on behalf of its clients;

(h) Applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;

(i) Grant of certificate to applicant is in interest of e development of securities market;

(j) Is a fit and proper person as per criteria specified in Schedule II of SEBI (Intermediaries) Regulations, 2008.

3.6 Categories of eligible FPIs:

Category I – Government and Government related investors such as Central Banks, Governmental agencies, sovereign wealth funds, international/multilateral organisations/ agencies. ***Category II*** – Appropriately regulated broad based funds such as mutual funds, investment trusts, insurance/reinsurance companies, appropriately regulated persons such as banks, asset management companies, investment managers/advisors, portfolio managers, broad based funds that are not appropriately regulated whose investment manager is appropriately regulated, university funds and pension funds as well as university related endowments already registered with SEBI as FII/SA. ***Category III*** – All other FPIs not eligible under Categories I and II such as Endowments, Charitable Societies/ Trust, Foundations, Corporate Bodies, Trusts, Individuals, Family Offices, etc.

3.7 No FPI may issue, subscribe to or otherwise deal in offshore derivative instruments/Participatory Notes ('ODI'), directly or indirectly, unless prescribed conditions are satisfied including transfer of ODIs. ODI means any instrument which is issued overseas by FPI against Indian securities as its underlying.

3.8 FPI may purchase shares or convertible debentures of an Indian company under FPI Scheme subject to terms and conditions specified in Schedule 2A. Total holding (acquired both through primary as well as secondary market, through offer/private placement) by each FPI and deemed FPI (erstwhile FIIs/SAs/QFI) shall be below 10% of total paid-up equity capital or 10% of paid-up value of each series of convertible debentures issued, and total holdings/aggregate limit of all FPIs put together shall not exceed 24% of such securities. Aggregate limit of 24% may be increased up to sectoral cap/statutory ceiling, as applicable, by Indian company concerned by passing resolution by its Board of Directors followed by passing of special resolution to that effect by its General Body and intimation to RBI.

3.9 Composite Portfolio Investment Cap: 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.

3.10 FPI shall be subject to FDI policy in respect of sectoral caps i.e. maximum amount which can be invested by foreign investors, under Schedule 1, in an entity, is composite and includes all types of foreign investments, direct and indirect, regardless of whether said investments have been made under Schedules 1(FDI), 2(FII), 2A(FPI), 3(NRI), 6(FVCI), 8(QFI), 9(LLPs) and 10(DRs).

3.11 An Indian company can also issue shares to FPI under the FDI Policy (Schedule 1). However, consolidated investment for individual FPI will not exceed 10%.

3.12 (a) In case of Public Offer, price is not less than price at which shares are issued to residents, and (b) in case of issue by private placement, price is not less than price arrived in terms of SEBI guidelines or not less than fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by SEBI registered Merchant Banker or Chartered Accountant.

3.13 FPI may, undertake short selling as well as lending and borrowing of securities subject to conditions stipulated by RBI and SEBI.

3.14 RBI monitors ceilings on FPI investments on daily basis, and the 'caution' and the 'stop purchase' communications are made public through press releases[3].

4. FPI for purchase of securities *other than shares or convertible debentures* under Schedule 5 *on repatriation basis*

4.1 FPI may purchase/sell/redeem, **on repatriation basis**, either directly from issuer of such securities or through registered stock broker on recognised stock exchange in India following securities, subject to terms and conditions as specified by SEBI and RBI:

(a) Dated Government securities/treasury bills;

(b) Listed NCDs/bonds issued by Indian company;

(c) Commercial papers issued by Indian company;

(d) Units of domestic mutual funds;

(e) Security Receipts issued by ARC – subject to prescribed ceiling;

(f) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India subject to prescribed ceiling;

(g) Listed and unlisted NCDs/bonds issued by Indian company in infrastructure sector;

(h) NCDs/bonds issued by NBFCs categorized as IFCs;

(i) Rupee denominated bonds/units issued by Infrastructure Debt Funds;

(j) Primary issues of NCDs/bonds committed to be listed within 15 days of such investment; subject to sale/redemption/buy back if not listed;

(k) Credit enhanced bonds;

(l) Listed non-convertible/redeemable preference shares or debentures issued out of general reserves by way of distribution as bonus;

(m) Security receipts issued by securitisation companies.

5. Investment by FPI/NRI in Investment Vehicle under Schedule 11 *on repatriation basis*

5.1 FPI/NRI may invest in units of Investment Vehicles – SEBI registered REITs, InvIts, AIFs subject to Schedule 11. Downstream investment

3. https://www.rbi.org.in/scripts/bs_fiiuser.aspx

shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14. For sponsors or managers or investment managers organised in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

5.2 Downstream investment has to conform to sectoral caps and conditions/restrictions, as applicable to company in which the downstream investment is made as per Schedule 1. Downstream investment in an LLP has to conform to Schedule 9.

6. Listed NCDs/Bonds *on repatriation basis*

6.1 FPI may purchase/subscribe to listed NCDs/bonds issued by Indian company - through public issue or on private placement basis under SEBI (Issue and Listing of Debt Securities) Regulations, 2008, with following terms/advantages:

(i) Compulsory listed on the Wholesale Debt Market segment of BSE Limited;

(ii) Assured Return possible; no cap on interest; coupon rate + additional yield on redemption linked to share price of listed share; earn out; cash flow; valuation; profits; IRR etc.;

(iii) No sector restrictions;

(iv) No ECB restrictions;

(v) Purchase from secondary market;

(vi) Open Pricing;

(vii) Exit: Redemption/sale;

(viii) Full Repatriation;

(ix) Credit rating;

(x) Secured or Unsecured;

(xi) With Put & Call options;

(xii) Face Value: minimum ` 10 lakhs per instrument;

(xiii) Even private limited companies can issue subject to additional compliances applicable for a listed company under Companies Act 2013[4];

(xiv) Only in dematerialised form;

(xv) Listed in 15-30 days;

(xvi) Only persons who are specifically addressed are eligible to apply.

7. Rupee denominated bonds overseas ('Masala Bonds') under FEMA 3 *on repatriation basis*

7.1 HDFC successfully listed first by an Indian company, Masala bond of INR 30 billion of three-years at an annualised yield of 8.33%, on London Stock Exchange on July 14, 2016. Masala Bonds are an alternative to raising overseas debt through Listed NCDs to FPIs, and Foreign currency denominated borrowing/ECB.

7.2 Form of borrowing: Any corporate (entity registered as a company under Companies Act, 1956/2013) or body corporate (created by Act of Parliament), or REITs or INVITs can issue plain vanilla Rupee denominated bonds issued overseas in FATF compliant financial centres. Bonds can be either placed privately or listed on exchanges as per host country regulations. LLPs and Partnership firms, etc. are not eligible.

7.3 Available routes and limits of borrowing: Automatic Route: Up to INR 50 billion per financial year; cases beyond this limit will require prior approval of RBI. Issuance of bonds will be within aggregate limit of INR 2443.23 billion for foreign investment in corporate debt.

7.4 Minimum Maturity: Three years with call and put option not prior to completion of minimum maturity.

4. http://www.bseindia.com/markets/debt/memorandum_data.aspx?expandable=3

7.5 All-in-Cost: Commensurate with prevailing market conditions and comparable with cost at which borrowing company is able to raise funds domestically.

7.6 End-use Prescriptions: All purposes except: i. Real estate activities other than development of integrated township/affordable housing projects; ii. Investing in capital market and using proceeds for equity investment domestically; iii. Activities prohibited as per FDI guidelines; iv. On-lending to other entities for any of above purposes; and v. Purchase of land.

7.7 ECB liability: Equity ratio, as applicable for raising ECB from foreign equity holder: Not applicable.

7.8 Exchange Rate for conversion: Market rate.

7.9 Hedging: Overseas investors are eligible to hedge their exposure in Rupee.

7.10 Other provisions: ECB framework - obtaining LRN, parking of proceeds, security/ guarantee for borrowings, conversion into equity, corporates under investigation, etc. will be applicable. The Companies (Share Capital and Debenture) Rules, 2014 is not applicable.

8. Acquisition of Securities or Units by NRI on Stock Exchange in India *on Repatriation basis* under PIS under Schedule 3

8.1 NRI may purchase or sell shares, convertible preference shares, convertible debentures and warrants of Indian company or units of an investment vehicle (SEBI registered REITs, InvIts, AIFs), on repatriation basis, under PIS on a recognised stock exchange, subject to following conditions:

a. Through designated branch of AD;

b. The paid-up value of (i) shares, (ii) convertible preference shares or convertible debentures, and (iii) warrants of any series of Indian company purchased by any individual NRI should not exceed 5% of such instruments; and aggregate securities by all NRIs should not exceed 10% of paid-up value thereof. Provided that aggregate ceiling of 10% may be raised to 24% if special resolution to that effect is passed by General Body of Indian company concerned and intimation to RBI;

c. NRI investor should take delivery and give delivery; and

d. Investment shall be subject to FDI policy in respect of sectoral caps i.e. the maximum amount which can be invested by foreign investors, under schedule 1, in an entity, is composite and includes all types of foreign investments, direct and indirect, regardless of whether made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs).

8.2 Prior to February 15, 2016, acquisition of listed security issued by company by NRIs, on non-repatriation basis, was governed by Schedule 3. Now it is governed under Schedule 4. Limit of 5% for any individual NRI, both on repatriation and on non-repatriation basis, has been retained for repatriation basis. Under Schedule 4, NRI may acquire, on non-repatriation basis, any security issued by a company and units issued by an investment vehicle, without any limit, either on the stock exchange or outside it.

8.3 RBI monitors ceilings on NRI/PIO investments on daily basis, and the 'caution' and the 'stop purchase' communications are made public through press release.

9. Acquisition of Securities or units by NRI, *on non-repatriation basis* under Schedule 4

9.1 'Investment on non-repatriable basis' means investment, the sale proceeds of which, net of taxes, are not eligible to be repatriated out of India.

5. https://www.rbi.org.in/scripts/bs_fiiuser.aspx

9.2 NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs ('Overseas Entity'), may acquire and hold, on non-repatriation basis, without any limit, which will be deemed to be domestic investment at par with investment made by residents in India:

a. Acquire any security issued by a company either on the stock exchange or outside it.

b. Invest in units issued by an investment vehicle (SEBI registered REITs, InvIts, AIFs), either on the stock exchange or outside it.

c. Contribute to capital of a partnership firm, a proprietary firm or a limited liability partnership (under Limited Partnership Act, 2008).

9.3 Accordingly, now Overseas Entity will be eligible for investment under Schedule 4 and such investment will be deemed domestic investment at par with investment made by Residents. Similarly, under FDI policy/scheme under Schedule 1, Overseas Entity can invest in India with the special dispensation as available to NRIs, e.g., (a) Scheduled Air Transport Services/Domestic Scheduled Passenger Airlines, (b) Regional Air Transport Service, (c) Condition of lock-in period in Construction-development projects. This dispensation is not available for investment by NRIs under Schedules 3 and 11.

9.4 The concept of 'owned and controlled by NRIs' has not been defined under Schedule 4; but may be borrowed from Regulation 14. '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. A company is considered as 'Owned' by NRIs if more than 50% of the capital in it is beneficially owned by NRIs. A Partnership Firm will be considered as owned by NRIs if more than 50% of the investment in such firm is contributed by NRIs and such NRIs have majority of the profit share.

9.5 Since investments made under Schedule 4 are deemed domestic investment restrictions on sectoral/statutory cap/conditionalities, pricing guidelines, caps on rate of dividend on preference shares/interest on CCDs, entry route, reporting requirement (e.g. Advance Remittance Form, FCGPR, FC-TRS, Form-ESOP, FDI-LLP (I), Form FDI-LLP (II), Annual Return on Foreign Liabilities and Assets, Downstream Investment Reporting), documentation, etc., which are applicable on investment made by non-residents under Schedule 1, shall not apply.

9.6 Investments under Schedule 4 are not counted for direct and indirect foreign investment. Sectoral caps are given in Annex B to Schedule 1 and in Chapter 5 of the Consolidated FDI Policy (Effective from June 7, 2016).

9.7 NRI shall not make any investment, under Schedule 4, in a Nidhi company or a company engaged in agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights. Further, prohibition in certain sectors under FDI Scheme under Schedule 1 [i.e. (a) Lottery Business including Government/private lottery, online lotteries, etc. (b) Gambling and Betting including casinos etc. (c) Chit funds (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 specified permitted activities)] shall not apply to investments made under Schedule 4.

9.8 "Real estate business" means 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". Investment in units of Real Estate Investment

Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014 shall also be excluded from definition of "real estate business".

9.9 Acquisition of Rights Shares/Bonus Shares/Shares after merger, demerger, amalgamation/ESOP/Pledge of shares: Limitations/restrictions contained in FEMA 20 may not apply to investments made under Schedule 4.

9.10 Sale/Maturity proceeds/Remittance: The limitations/restrictions contained in FEMA 20 regarding transfer of shares by NRI may not apply to investments made under Schedule 4. However, a person resident in India, who intends to transfer any security, by way of gift to a person resident outside India, has to obtain prior approval from RBI subject to prescribed conditions.

9.11 Transfer of shares from NRI to NR requires prior approval of RBI.

9.12 The sale/maturity proceeds (net of applicable taxes) of securities or units acquired under Schedule 4 shall be credited only to NRO account irrespective of type of account from which considerations for acquisition were paid. The amount invested under Schedule 4 and the capital appreciation thereon shall not be allowed to be repatriated abroad.

9.13 Under FEMA 13(R)/2016-RB dated April 1, 2016, a NRI or PIO (being an individual) may remit through an AD an amount, not exceeding US$ 1,000,000 per financial year (April to March) out of balances held in NRO accounts opened in terms of FEM (Deposit) Regulations, 2016 - subject to the applicable taxes paid in India. Funds can also be transferred to NRE account. It is not clear how a company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be able to remit funds outside India.

10. NRI for purchase of securities, other than shares or convertible debentures under Schedule 5

10.1 NRI may, without limit, purchase/sell/ redeem ***on repatriation basis***

(i) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;

(ii) Bonds issued by PSU;

(iii) Shares in PSE being disinvested by GOI;

(iv) Bonds/units issued by Infrastructure Debt Funds;

(v) Listed non-convertible/redeemable preference shares or debentures issued out of its general reserves by way of distribution as bonus;

(vi) National Pension System governed and administered by PFRDA. The annuity/ accumulated saving will be **repatriable**.

10.2 A NRI may purchase/sell/redeem ***on repatriation basis*** perpetual debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India subject to prescribed ceiling.

10.3 NRI may, without limit, purchase/sell/ redeem ***on non-repatriation basis***

(i) Dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings Certificates,

(ii) Listed non-convertible/redeemable preference shares or debentures issued out of its general reserves by way of distribution as bonus.

Conclusion

With liberalisation of Foreign Exchange regulations (substantially amended/ substituted/relaxed/ simplified) investment opportunities/structuring options are now available to foreign investors for making investments in India which makes India further an attractive destination for foreign investments.