

## Funding Options

### Funding General

#### 1. What documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift?

Documents to be submitted by a resident person for transfer of shares to a person resident outside India by way of gift: i) Name and address of the transferor (donor) and the transferee (donee). ii) Relationship between the transferor and the transferee. iii) Reasons for making the gift. iv) In case of Government dated securities and treasury bills and bonds, a certificate issued by a CA on market value of such security. v) In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security. vi) In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India or as per any internationally accepted pricing methodology on arm ' s length basis for listed companies and unlisted companies, respectively. vii) Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company. viii) An undertaking from resident transferor that value of security to be transferred together with any security already transferred by transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of \$ 50,000 during a financial year\*. ix) A declaration from donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof. Please refer to 'section 2' of Annexure-3 Consolidated FDI Policy at link for more information. \*RBI ' s A.P. (DIR Series) Circular No. 14 Dated 15.09.2011

#### 2. What is Sponsored American Depository System/ Global Depository System issue?

An Indian company can sponsor an issue of ADR/ GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/ GDRs can be issued abroad. The proceeds of the ADR/ GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. For more information, click here.

### 3. What documents are required for sale of shares by a person resident in India?

The following documents are required for sale of shares by a person resident in India: (i) Consent letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record. (ii) Where consent letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares. (iii) The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs, FPIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed. (iv) Certificate indicating fair value of shares from a Chartered Accountant. (v) Copy of Broker ' s note if sale is made on Stock Exchange. (vi) Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with. (vii) Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached, till it gets registered as FPI. Please refer to subsection 5.1 of 'section 1' of Annexure-3 of Consolidated FDI Policy at link for more information.

### 4. What is the list of case where prior approval is needed by RBI to transfer capital instruments?

The following cases require prior approval of RBI: Transfer of capital instruments from resident to non-residents by way of sale where: Transfer is at a price which falls outside the pricing guidelines specified by RBI Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration. Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. For more information, click here.

### 5. What is the duration within which capital instruments need to be issued, post receiving inward remittances?

The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account or by debit to the

NRE/FCNR (B) account of the non-resident investor. In case, the capital instruments are not issued within this time, the amount received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance to this would be reckoned as a contravention under the Foreign Exchange Management Act and would attract penal provisions. In exceptional cases, refund of the amount outstanding beyond 180 days from the date of receipt may be considered by the Reserve Bank of India on the merits of the case. For more information, [click here](#)

## **6. What is the procedure for reporting the issue of shares against conversion of External Commercial Borrowing?**

In case of partial or full conversion of external commercial borrowing (ECB) into equity, the reporting to the Reserve Bank of India (RBI) happens as under: For partial conversion - Converted portion to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR, while monthly reporting to the Department of Statistics and Information Management (DSIM) in ECB 2 Return (Annex III) For full conversion - Entire portion is to be reported in Form FC-GPR, while reporting to DSIM in ECB 2 Return. For conversion in phases - Reporting through ECB 2 Return will also be in phases For more information, [click here](#).

## **7. What is the procedure for reporting of transfer of shares?**

Reporting of transfer of shares between residents and non-residents and vice-versa is to be done in Form FC-TRS (Section-4). The Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration. For more information, [click here](#).

## **8. Is it possible for Indian Companies to issue employees' stock option and/or sweat equity shares?**

Yes, an Indian company may issue “ employees ’ stock option ” and/or “ sweat equity shares ” to its employees/ directors or employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India subject to provisions contained in Companies Act 2013 and SEBI Act 1992. For more information, [click here](#)

## **9. Would I be able to get financing support from Make in India?**

The Make in India initiative was launched by Prime Minister in September 2014 as part of a wider set of nation-building initiatives. For more information, [click here](#)

## 10. What is debt restructuring of advances?

Debt restructuring is an act in which a lender, for economic or legal reasons relating to the borrower's financial difficulty, grants concessions to the borrower. Restructuring normally involves modification of terms of the advances/ securities, which would generally include, among others, alteration of repayment period, repayable amount, the number/amount of installments, rate of interest, roll over of credit facilities, sanction of additional credit facility, enhancement of existing credit limits, compromise settlements where time for payment of settlement amount exceeds three months. For more information, [click here](#).

## 11. Who is a Foreign Venture Capital Investor (FVCI)?

FVCI refers to an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 {SEBI (FVCI) Regulations} and proposes to make investments in accordance with FDI Regulations. For more information, [click here](#).

## 12. Is transfer of shares to non-residents/ NRIs permitted as per the FDI policy?

General permission is granted to non-residents/ NRIs for acquisition of shares by way of transfer in the following situations: 1) Transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. Government approval is required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route 2) NRIs may transfer by way of sale or gift shares or convertible debentures to another NRI 3) Person resident outside India can transfer any security to a person resident in India by way of gift 4) A person resident outside India can sell shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered stock broker or a registered merchant banker 5) A person resident in India can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber ' s shares), of an Indian company under private arrangement to a person resident outside India, subject to the FDI Policy guidelines 6) Transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the FDI guidelines 7) The above mentioned situations also covers transfer by a resident to a non-resident of shares/convertible

debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. Please refer to section 4 of Annexure-3 of Consolidated FDI Policy at link for more information.

### **13. Are NRIs(Non-Resident Indians) allowed to invest in sole proprietorship in India?**

NRI or a person of Indian origin (PIO) can invest in sole proprietorship / partnership firm on non-repatriable basis, except those in agricultural or plantation or real estate business, or in the print media sector. NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. For more information, click [here](#).

### **14. What are the regulations on Remittance on winding up/liquidation of Companies?**

AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act 2013 as applicable. AD Category-I banks shall allow the remittance provided the applicant submits: a) No objection or Tax clearance certificate from Income Tax Department for the remittance. b) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for. c) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable. d) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceeding pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance. Please refer to subsection 1.1(iii) of Annexure-6 of Consolidated FDI Policy at link for more information.

### **15. What is the capability criteria concerning the Trustee in InvITs?**

Eligibility criteria for the grant of certificate for a trustee in the Infrastructure Investment Trusts (InvITs) are That the trustee is registered with SEBI under SEBI (Debentures Trustees) Regulations, 1993 and is not an associate of the sponsor or manager That the trustee has such wherewith with respect to infrastructure, personnel, etc. to the satisfaction of SEBI and in accordance with circulars specified by the Board. For more information, click [here](#)

## 16. What are the guidelines to be followed in the event of a delay in issuing capital instruments?

If the capital instruments are not issued by the Indian company within 60 days from the date of receipt of the inward remittance, the amount so received must be refunded to the person concerned by outward remittance through banking channels or by credit to the person 's Non-Resident External (NRE)/ Foreign Currency Non-Resident (FCNR) (B) accounts, as the case may be, within 15 days from the date of completion of 60 days. Non-compliance of instructions shall be a contravention of Foreign Exchange Management Act 20 (R) notwithstanding the fact that interest for delayed refund has been paid as per the Companies Act, 2013. For more information, [click here](#)

## 17. What is meant by Downstream Investment?

' Downstream Investment ' means indirect foreign investment, by an eligible Indian entity, into another Indian company / LLP, by way of subscription or acquisition. For more information, [click here](#).

## 18. What documents are required for sale of shares by a person resident outside India?

Documents required for the sale of shares by a person resident outside India: i) Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. ii) Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record. iii) If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable. iv) Certificate indicating fair value of shares from a Chartered Accountant. v) No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Account. vi) Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to. Please refer to subsection 5.2 of 'section 1' of Annexure-3 Consolidated FDI Policy at [link](#) for more information.

## 19. What is the method of payment and remittance/credit of sale proceeds for a person residing outside India?

The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a FII, FPI, payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO accounts. The sale proceeds of shares (net of taxes) sold by a person resident outside India may be remitted outside India. In case of FII/FPI, the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE /FCNR (B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes. The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to payment of taxes, except in the case of OCBs whose accounts have been blocked by Reserve Bank. Please refer to subsection-4 of 'Section 1' of Annexure-3 of Consolidated FDI Policy at [link](#) for more information.

## 20. What is meant by ' AD Category-I Bank'?

' 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.

## 21. Are dividends repatriable?

Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of Foreign Exchange Management (Current Account Transactions) Rules, 2000 For more information, [click here](#).

## 22. Are foreigners allowed to invest in India?

A non-resident entity can invest in India, subject to the prevailing FDI Policy, except in those sectors which are prohibited. Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may invest in the capital of an Indian Company under the Portfolio Investment Scheme, subject to FEMA provisions. For more information, [click here](#).

### 23. What are the project funding options available in India?

Projects in India can be financed through sources such as Bank loans, Private equity, Public subscriptions, Debt instruments and Government bonds. If you are a start-up or a SME, then you can register on Startup India. You can also register on India Investment Grid, which is our repository of investible projects.

### 24. Are Non-Resident Indians allowed to make investments in India?

An NRI can invest in capital of Indian companies on non-repatriation basis provided: The amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks. The entity is not engaged in agricultural/plantation or real estate business or construction of farmhouses or dealing in Transfer of Development Rights. Amount invested not eligible for repatriation outside India. For investments on a repatriable basis, provisions of FDI policy apply. For more information, [click here](#).

### 25. Where can complaints against listed company be registered?

SEBI Complaints Redress System (SCORES) is an online platform designed to help investors lodge their complaints online with SEBI pertaining to securities market against listed companies and SEBI registered intermediaries. All complaints received by SEBI against listed companies and SEBI registered intermediaries are dealt through SCORES. For more information, [click here](#)

### 26. What is Foreign investment facilitation board?

The Foreign Investment Facilitation Portal (FIFP) is the new online single point interface of the Government of India for investors to facilitate Foreign Direct Investment. This portal is being administered by the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry. For more information, [click here](#)

### 27. What is procedure of issuing Foreign Currency Convertible Bonds?

A. For listed companies Any Indian company not eligible to raise funds from the Indian capital market or restrained from accessing securities market by SEBI is not eligible to issue FCCB Erstwhile



Overseas Corporate Bodies not eligible to invest in India through portfolio and entities prohibited to buy, sell or deal in securities by SEBI are not eligible to subscribe to FCCB Pricing of GDR/ FCCB should not be less than the higher of either average of weekly high and low of closing prices of related shares for six months preceding the relevant date or average of weekly high and low of closing prices of related shares for two weeks preceding the relevant date The voting rights shall be as per the provisions of The Companies Act 2013 B. For unlisted companies Companies which have not yet accessed GDR/ FCCB route for raising capital in international market need to get listed in the domestic market Companies which have already issued GDR/ FCCB in the international market would now require listing in the domestic market on making profit beginning 2005-06 or within 3 years of such issue

### **28. What is the subsidy under Micro Units Development and Refinance Agency?**

There is no subsidy for the loan given under Pradhan Mantri Mudra Yojana (PMMY). However, if the loan proposal is linked to some Government scheme, wherein the Government is providing capital subsidy, it will be eligible under PMMY also. For more information, [click here](#)

### **29. Could ECB be profited for reimbursement of local INR credit?**

Yes, however, it is only permitted if external commercial borrowing (ECB) is raised from direct and indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years. ECB raised under Tracks I or III for repayment of Rupee loans, must be raised from a foreign equity holder. For more information, [click here](#)

### **30. What are the reporting requirements for foreign currency convertible bond/depository receipts Issues?**

The domestic custodian needs report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in ' Form DRR ' given in Section 5, Annexure 6 of the Consolidated FDI Policy, 2017, within 30 days of close of the issue/ program. For more information, [click here](#)

### **31. What is Two-way Fungibility Scheme?**

A limited two-way Fungibility Scheme has been put in place by the Government of India for American

Depository Receipts (ADR)/ Global Depository Receipts (GDR). Under this Scheme, a stock broker in India, registered with Securities & Exchange Board of India (SEBI), can purchase shares of an Indian company from the market for conversion into ADR/GDR based on instructions received from overseas investors. Re-issuance would be permitted to the extent of ADR/GDR which have been redeemed into underlying shares and sold in the Indian market. For more information, click [here](#)

### **32. Which bodies and organizations can be classified as Funding Bodies?**

As per the notification no. G.S.R 180(E) dated February 17, 2016, Alternate Investment Funds, Venture Capital Funds, Angel Fund and Seed Funds registered with SEBI can be classified as Funding bodies. These bodies are eligible for providing recommendation/ support/ endorsement letter to entities in which more than 20 percent equity is taken up by such funds. A list of SEBI registered VCFs and AIFs has been published on Start-up India portal on <http://startupIndia.gov.in> For more information, click [here](#)

### **33. What is a ' Foreign Institutional Investor ' ?**

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. For more information, click [here](#).