

April 12, 2016

CORRIGENDUM

In the Notification of Reserve Bank of India, [Foreign Exchange Department No. FEMA.362/2016-RB dated February 15, 2016](#) bearing G.S.R.No.166 (E) and published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) (hereinafter referred as Gazette Notification)

2. In Paragraph 2 (B)

- i. (a) (ia) shall be substituted by the following

“(ia) ‘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.

For the purpose of Limited Liability Partnership, ‘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 Limited Liability Partnership.”

- ii. (c) (v) shall be substituted by the following

“(v) It is 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, 8, 9 and 10 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.”

- iii. (d) (ii) (a) shall be substituted by the following

“a. Such a company/LLP is to notify SIA, DIPP and FIPB of its downstream investment in the form available at <http://www.fipb.gov.in> within 30 days of such investment, even if capital instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme);”

3. In para 2 (C) (ii) shall be substituted by the following:

- i. “(ii) in paragraph 2, in sub-paragraph 4, after clause (iv), the following shall be added, namely:

“(v) by way of swap of shares, provided the 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 SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the home country.

Note: A company engaged in a sector where foreign investment requires Government approval may issue shares to a non-resident through swap of shares only with approval of the Government.”

4. In para 2 (C) (iv)

- a. The existing S. No. 6.1 of Annex B of Schedule 1 shall be substituted by the following:

6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	49%	Automatic route up to 49% Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.
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b. The existing S. No.16.3 of Annex B of Schedule 1 shall be substituted by the following:

16.3	Single Brand product retail trading	100%	Automatic up to 49% Government route beyond 49%
	<p>1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.</p> <p>2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <ol style="list-style-type: none"> a) Products to be sold should be of a 'Single Brand' only. b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India. c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing. d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval. e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met annually from the commencement of the business i.e. opening of the first store. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of Foreign Investment for the purpose of carrying out single-brand product retail trading. f) Subject to the conditions mentioned in this Para, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce. <p>3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product</p>		

	<p>categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49 %, the list of products/product categories proposed to be sold except food products would be provided to the RBI.</p> <p>4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.</p> <p>Note:</p> <ol style="list-style-type: none"> i. Conditions mentioned at Para (2) (b) & (2) (d) will not be applicable for undertaking SBRT of Indian brands. ii. An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. iii. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers. iv. Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens. v. Government may relax sourcing norms for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.
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c. The existing S. No.16.5 of Annex B of Schedule 1 shall be substituted by the following

16.5	Duty Free Shops	100%	Automatic
	<p>(i) Duty Free Shops would mean shops set up in custom bonded area at International Airports/ International Seaports and Land Custom Stations where there is transit of international passengers.</p> <p>(ii) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.</p> <p>(iii) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.</p>		

d. The existing paragraph F.5.2 (3) (c) shall be substituted by the following:

“(c) FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.”

5. The other contents of the Gazette Notification shall remain unchanged.

(Shekhar Bhatnagar)
Chief General Manager-in-charge

<p>Published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) dated 12.04.2016- G.S.R.No.417(E)</p>
