

**RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
CENTRAL OFFICE
MUMBAI-400 001**

Notification No.FEMA. 319 /2014-RB

September 5, 2014

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2014

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 ([Notification No. FEMA. 20/2000-RB dated 3rd May 2000](#)), namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Thirteenth Amendment) Regulations, 2014.
- (ii) They shall come into force from August 26, 2014@ .

2. Amendment of Regulation 14

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in regulation 14, in sub-regulation (3), in clause (iv), in para (D), the words, “and Defence sectors” shall be deleted.

3. Amendment of Schedule 1

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in the existing Annex B, the existing entry 6, 6.1 and 6.2 shall be substituted by the following:

SI. No.	Sector/Activity	% of Equity/FDI Cap	Entry Route
6	Defence		
6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	49%	Government route up to 49% Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.
<p>Note: (i) The above limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.</p> <p>(ii) Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.</p>			
6.2	Other Conditions		

- (i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.
- (ii) The applicant company seeking permission of the Government for FDI up to 49% should be an Indian company owned and controlled by resident Indian citizens.
- (iii) The management of the applicant company should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company/partnership firm being resident Indians.
- (iv) Chief Security Officer (CSO) of the investee/ joint venture company should be resident Indian citizen.
- (v) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.
- (vi) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.
- (vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.
- (viii) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.

- (ix) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.
- (x) Investee/joint venture company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.
- (xi) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.
- (xii) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.
- (xiii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.
- (xiv) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.
- (xv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons/entities other than the Central or State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.
- (xvi) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.
- (xvii) Applications for FDI up to 49% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by Cabinet Committee on Economic Affairs (CCEA).
- (xviii) Based on the recommendation of the Ministry of Defence and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the Ministry of Defence in respect of cases seeking permission of the Government for FDI beyond 49% which are likely to result in access to modern and 'state-of-art' technology in the country.

	<p>(xix) Proposals for FDI beyond 49% with proposed inflow in excess of Rs. 1200 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee on Economic Affairs (CCEA).</p> <p>(xx) Government decision on applications for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.</p> <p>(xxi) For the proposal seeking Government approval for foreign investment beyond 49% applicant should be Indian company/foreign investor. Further condition at para (iii) above will not apply on such proposals.</p>
--	---

Yours faithfully,

(C.D. Srinivasan)
Chief General Manager

Foot Note:-

(i) @ It is clarified that no person will be adversely affected as a result of the retrospective effect being given to these Regulations.

(ii) The Principal Regulations were published in the Official Gazette vide G.S.R. No.406 (E) dated May 8, 2000 in Part II, Section 3, sub-Section (i) and subsequently amended as under:-

G.S.R.No. 158(E) dated 02.03.2001

G.S.R.No. 175(E) dated 13.03.2001

G.S.R.No. 182(E) dated 14.03.2001

G.S.R.No. 4(E) dated 02.01.2002

G.S.R.No. 574(E) dated 19.08.2002

G.S.R.No. 223(E) dated 18.03.2003

G.S.R.No. 225(E) dated 18.03.2003

G.S.R.No. 558(E) dated 22.07.2003

G.S.R.No. 835(E) dated 23.10.2003

G.S.R.No. 899(E) dated 22.11.2003

G.S.R.No. 12(E) dated 07.01.2004

G.S.R.No. 278(E) dated 23.04.2004

G.S.R.No. 454(E) dated 16.07.2004

G.S.R.No. 625(E) dated 21.09.2004

G.S.R.No. 799(E) dated 08.12.2004

G.S.R.No. 201(E) dated 01.04.2005

G.S.R.No. 202(E) dated 01.04.2005

G.S.R.No. 504(E) dated 25.07.2005

G.S.R.No. 505(E) dated 25.07.2005

G.S.R.No. 513(E) dated 29.07.2005

G.S.R.No. 738(E) dated 22.12.2005

G.S.R.No. 29(E) dated 19.01.2006

G.S.R.No. 413(E) dated 11.07.2006

G.S.R.No. 712(E) dated 14.11.2007

G.S.R.No. 713(E) dated 14.11.2007

G.S.R.No. 737(E) dated 29.11.2007
G.S.R.No. 575(E) dated 05.08.2008
G.S.R.No. 896(E) dated 30.12.2008
G.S.R.No. 851(E) dated 01.12.2009
G.S.R.No. 341 (E) dated 21.04.2010
G.S.R.No. 821 (E) dated 10.11.2012
G.S.R.No. 606(E) dated 03.08.2012
G.S.R.No. 795(E) dated 30.10.2012
G.S.R.No. 796(E) dated 30.10.2012
G.S.R. No. 797(E) dated 30.10.2012
G.S.R.No. 945 (E) dated 31.12.2012
G.S.R. No.946(E) dated 31.12.2012
G.S.R. No.38(E) dated 22.01.2013
G.S.R.No.515(E) dated 30.07.2013
G.S.R.No.532(E) dated 05.08.2013
G.S.R. No.341(E) dated 28.05.2013
G.S.R.No.344(E) dated 29.05.2013
G.S.R. No.195(E) dated 01.04.2013
G.S.R.No.393(E) dated 21.06.2013
G.S.R.No.591(E) dated 04.09.2013
G.S.R.No.596(E) dated 06.09.2013
G.S.R.No.597(E) dated 06.09.2013
G.S.R.No.681(E) dated 11.10.2013
G.S.R.No.682(E) dated 11.10.2013
G.S.R. No818(E) dated 31.12.2013
G.S.R. No805(E) dated 30.12.2013
G.S.R.No.683(E) dated 11.10.2013
G.S.R.No.189(E) dated 19.03.2014
G.S.R.No.190(E) dated 19.03.2014
G.S.R.No.270(E) dated 07.04.2014
G.S.R.No. 361 (E) dated 27.05.2014
G.S.R.No.370(E) dated 30.05.2014
G.S.R.No.371(E) dated 30.05.2014

G.S.R.No.400(E) dated 12.06.2014

G.S.R.No. 435(E) dated 08.07.2014

G.S.R.No. 436(E) dated 08.07.2014

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 13.11.14- G.S.R.No.799(E)**