


Equity and Assets	Treatment under FEMA	Governing Regulation under FEMA	Update
(1) SHAREHOLDERS' FUND			
(a) Share capital			
Equity Share Capital			
(a) Issued and subscribed Fully paid up capital	Equity	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000  Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 dated 07 th Nov 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60) and Consolidated	'Foreign investment' has been defined under the New FEMA 20 to mean any investment by a person resident outside India in the capital instruments of an Indian company or in the capital of a limited liability partnership ('LLP'), on a repatriable basis ; thereby clarifying that investments made on a non-repatriable basis are to be treated as domestic investments and not included in the foreign investment limits. The definition of 'foreign direct investment' ('FDI') under the New FEMA 20 distinguishes between investments in unlisted and listed Indian companies.

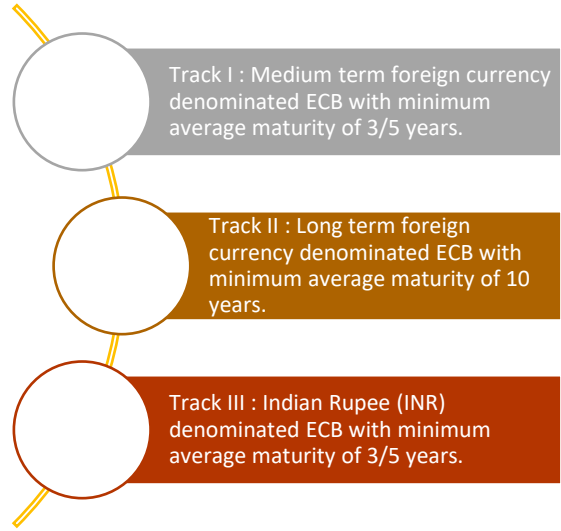
			<p>Any investment by a person resident outside India in the capital instruments issued by an unlisted Indian company is to be treated as FDI,</p> <p>in case of listed Indian companies, only investments of 10% or more of the post issue paid-up equity capital of a listed Indian company, computed on a fully diluted basis, is to be treated as FDI.</p> <p>Late submission fee for delayed filings: The New FEMA 20 states that delay in complying with reporting requirements (including Forms FC-GPR and FC-TRS) will now attract late submission fee ('LSF') of such amount as may be determined by the RBI in consultation with the Central Government. Paragraph 12 of Part IV of the Master Direction on Reporting under Foreign Exchange Management Act, 1999 provides for the quantum of LSF for regularizing reporting delays without undergoing the compounding procedure</p>
(b) Partly Paid up shares	Equity	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master Direction – Foreign Investment in India 11/2017-	Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue. Twenty five percent of the total consideration

		18 (RBI/FED/2017-18/60) and Consolidated FDI Policy Circular of 2017	amount (including share premium, if any), shall be received upfront.
(c) Equity Share capital (issued by way of Right issue/Bonus shares)	Equity	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60) and Consolidated FDI Policy Circular of 2017	<p>Provisions in relation to rights issue and bonus issue are broadly similar to those under Regulations, 2000 one of the key changes is in relation to subscribing to shares renounced in favor of person resident outside India.</p> <p>Extant Provision: Under Regulations, 2000 the investee company could allot the additional rights shares out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.</p> <p>Amended Provision: As per the explanation inserted in Regulations, 2017, it has been specified that the restriction in relation to repatriation in case where</p> <p>(a) original investment was made on non-repatriation basis or (b) the person was a resident in India when the rights was issued,</p> <p>shall be applicable even in case of person resident outside India makes investment on account of shares renounced in its favor by the person to whom it was offered.</p>

Preference Capital			
(i) Compulsory Convertible preference share	Equity	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	Clarification has been provided: <i>Non-convertible/ optionally convertible/ partially convertible preference shares issued up to April 30, 2007, as well as optionally convertible/ partially convertible debentures issued up to June 7, 2007 will be considered to be capital instruments till their original maturity;</i> Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.
(ii) Non-Convertible preference share	Debt as per FEMA, 1999	FEM (Borrowing and lending in foreign exchange) Regulations, 2000 read with Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers (FED Master Direction No.5/2015-16)	
(b) Reserves and surplus			
Dividend	Repatriation of dividend	Foreign Exchange Management (Current Account Transactions) Rules, 2000	
Share Premium Account	Valuation of shares	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	The overall pricing guidelines remains same with a change that In case of an unlisted Indian company, the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis can be certified by a practicing Cost Accountant.
Share option outstanding Account	Employees stock option	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master	Additional condition has been inserted An employee who was a person resident in India when the options were granted cannot

		Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	repatriate the sale proceeds after selling the shares so acquired pursuant to exercise of options.
(c) Money received against share Warrants			
Warrants	Warrants	Consolidated FDI Policy Circular of 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	Share warrants can be issued to a person resident outside India only in accordance with the regulations issued by the Securities and Exchange Board of India (<i>i.e.</i> the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009), <i>i.e.</i> share warrants can be issued to a person resident outside India only by a listed Indian company
(2) SHARE APPLICATION MONEY PENDING ALLOTMENT			
Share Application Money	Share Capital	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Consolidated FDI Policy Circular of 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	<p>Issue of capital instruments within 60 days Para 2 (2) of Schedule 1 provides that Capital instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.</p> <p>In case of partly paid equity shares, the period of 60 days shall be reckoned from the date of receipt of each call payment.</p> <p>Regulations, 2000 mandated issuance within 180 days from receipt of inward remittance. Companies Act, 2013 provides to allot securities within 60 days of receipt of application money or advance for such securities. Regulation, 2017 aligns the requirement to issue capital instruments with Act, 2013.</p>

			Further, proviso has been inserted to the effect that prior approval of RBI will be required for payment of interest in case of any delay in refund of the amount.
(3) NON- CURRENT LIABILITY			
(a) Long-term borrowings			
Debt from foreign institution/foreign equity holder	External Borrowings	Commercial	<p>FEM (Borrowing and lending in foreign exchange) Regulations, 2000 read with read with Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers (FED Master Direction No.5/2015-16)</p> <p>(i) Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs)</p> <p>Uniform all-in-cost ceiling of 450 basis points over the benchmark rate is stipulated.</p> <p>The benchmark rate will be</p> <ul style="list-style-type: none"> • 6 month USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II • Prevailing yield of the Government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs. <p>(ii) Revisiting ECB Liability to Equity Ratio provisions</p> <p>The ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder (<i>direct foreign equity holder with minimum 25% direct equity holding by the lender in the borrowing entity</i>) under the automatic route is increased</p>

		 <p>Track I : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.</p> <p>Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years.</p> <p>Track III : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.</p>	<p>to 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.</p> <p>(iii) Expansion of Eligible Borrowers' list for the purpose of ECBs</p> <p>It has been decided to permit:</p> <p>a) Housing Finance Companies, regulated by the National Housing Bank, Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 as eligible borrowers to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.</p> <p>b) Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.</p> <p>(iv) Rationalisation of end-use provisions for ECBs</p> <p>Currently, a positive end-use list is prescribed for Track I and specified category of borrowers, while negative end-use list is prescribed for Track II and III. It has now been decided to have only a negative list for all tracks.</p>
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Bonds	Foreign Currency Convertible Bonds/ Foreign Currency	FEM (Borrowing and lending in foreign exchange) Regulations, 2000 read with read with Master Direction - External Commercial	

	Exchangeable Bonds	Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers (FED Master Direction No.5/2015-16)	
(b) Deferred tax liabilities (Net)			
Gain/loss arising out of foreign exchange transactions	Hedging of gain/loss arising out of foreign exchange transactions	Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000	Simplified Hedging Facility is notified with circular dated 09th Nov 2017 with a view to simplify the process for hedging exchange rate risk by reducing documentation requirements, avoiding prescriptive stipulations regarding products, purpose and hedging flexibility, and to encourage a more dynamic and efficient hedging culture.
(c) Other long-term liabilities			
Fully and mandatorily convertible debentures	Equity for the purpose of FEMA	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	“Capital instrument” means equity shares, debentures, preference shares and share warrants, issued by an Indian Company; Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.
Long Term Creditors	Import payment	Foreign Exchange Management (Current Account Transactions) Rules, 2000	An Indian company may issue capital instruments to a person resident outside India under automatic route if the Indian investee company is engaged in a sector under automatic route or with prior Government ap-

			<p>approval if the Indian investee company is engaged in a sector under Government route against:</p> <p>Import of capital goods/ machinery/ equipment (excluding second-hand machinery) subject to the following conditions:</p> <p>(i) The import of capital goods, machineries, etc., made by a person resident in India, is in accordance with the Foreign Trade Policy notified by the Directorate General of Foreign Trade (DGFT) and the regulations on imports issued under the Act;</p> <p>(ii) There is an independent valuation of the capital goods/ machineries/ equipment by a third party entity, preferably an independent valuer from the country of import along with production of copies of documents/ certificates issued by the customs authorities towards assessment of the fair-value of such imports;</p> <p>(iii) In case of applications submitted for Government approval:</p> <p>The applications should be accompanied by documents evidencing (ii) above and a special resolution of the company; The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and</p>
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			Applications (complete in all respects) for capitalization should be submitted within 180 days from the date of shipment of goods.
(d) Long-term provisions			
(4) CURRENT LIABILITY			
(a) Short-term borrowings			
Trade Credit	Suppliers credit/ Buyers credit Buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution.	FEM (Borrowing and lending in foreign exchange) Regulations, 2000 read with Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers (FED Master Direction No.5/2015-16)	RBI has decided to discontinue the practice of issuance of Letter of undertaking / Letter of Credit for Trade Credits for imports into India by AD Category-I banks with immediate effect. Letters of Credit and Bank Guarantees for Trade Credits for imports into India may continue to be issued subject to compliance with the provisions contained in Department of Banking Regulation Master Circular No. DBR. No. Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on "Guarantees and Co-acceptances", as amended from time to time.
(b) Trade payables			
Invoice Payable	Import payment	Foreign Exchange Management (Current Account Transactions) Rules, 2000 Remittances against imports should be	Extension of Time (i) AD Category – I banks can consider granting extension of time for settlement of import dues up to a period of six months at a time

		<p>completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.</p>	<p>(maximum up to the period of three years) irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against the seller. In cases where sector specific guidelines have been issued by Reserve Bank of India for extension of time (i.e. rough, cut and polished diamonds), the same will be applicable.</p> <p>Settlement of Import transactions in currencies not having a direct exchange rate</p> <p>To further liberalize the procedure and facilitate settlement of import transactions where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, it has been decided that AD Category-I banks may permit settlement of such import transactions (excluding those put through the ACU mechanism), subject to conditions as under:</p> <p>Importer shall be a customer of the AD Bank, Signed contract / invoice is in a freely convertible currency, The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/ contract, Letter of Credit as full and final settlement,</p>
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			AD bank is satisfied with the bonafides of the transactions, and The counterparty to the importer of the AD bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures.
(c) Other current liabilities			
Advance Payments	Advance Payments received against Exports	Foreign Exchange Management (Export of Goods and Services) Regulations, 2015	
(d) Short-term provisions			
TOTAL			
ASSETS	Nature as per FEMA, 1999	Governing Regulation	
(1) NON-CURRENT ASSETS			
(a) Fixed assets			
Tangible Assets	Immovable Property outside India	FEM (Acquisition and transfer of immovable property outside India) Regulations, 2015 and FEM (Foreign Currency Accounts by a person resident in India) Regulations, 2015 and FEM (Remittance of Assets) Regulations, 2016	A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, provided total remit-

		<p>-----</p> <p>The RBI has issued revised regulations to regulate acquisition and transfer of immovable property in India viz. Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India), Regulations, 2018 (Revised Regulations) in supersession of Notification No. FEMA 21/2000-RB dated May 3, 2000, as amended from time to time.</p>	<p>tances do not exceed the following limits prescribed for initial and recurring expenses, respectively:</p> <p>15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher; 10 per cent of the average annual sales/ income or turnover during the last two financial years.</p>
(b) Non-current investments			
Investment in Equity Instruments of foreign Company	Overseas Direct investment	FEM (Transfer or issue of any foreign security) Regulations, 2004 read with Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (FED Master Direction No. 15/2015-16)	<p>Hitherto the Annual Performance Report (APR) in case of JV/WOS where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS was required to be submitted by the Indian party based on the un-audited annual accounts of the JV/WOS provided (i) the Statutory Auditors of the Indian party certify that ‘The un-audited annual accounts of the JV/WOS reflect the true and fair picture of the affairs of the JV/WOS’; and (ii) that the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party.</p> <p>The RBI has amended the aforesaid requirement relating to filing of APR where the law of the host country does not mandatorily require auditing of the books of</p>

			<p>accounts of JV / WOS.</p> <p>Henceforth the APR in such cases may be submitted by the Indian Party based on the un-audited annual accounts of the JV / WOS provided (i) the Statutory Auditors of the Indian Party certify that law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS and the figures in the APR are as per the un-audited accounts of the overseas JV/ WOS (ii) that the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party; and (iii) JV/WOS is not in a country / jurisdiction which is either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or the any other country/jurisdiction as prescribed by RBI.</p> <p>Presently there is no restriction on an Indian Party with regard to the countries, where it can undertake Overseas Direct Investment. The RBI has now, in order to align the instructions with the objectives of FATF, decided to prohibit an Indian Party from making direct investment in an overseas entity (set up or acquired abroad directly as JV/ WOS or indirectly as step down subsidiary) located in the countries identified by the FATF as “non co-operative countries and territories” as per list available on FATF website www.fatf-gafi.org or as notified by</p>
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			the RBI from time to time.
Investment in equity instrument of Indian Company	Downstream Investment	Consolidated FDI Policy 2017 read with Master Direction – Foreign Investment in India 11/2017-18 (RBI/FED/2017-18/60)	
(c) Deferred tax assets (net)			
Gain/loss arising out of foreign exchange transactions	Hedging of gain/loss arising out of foreign exchange transactions	Foreign Exchange Management (Foreign exchange derivative contracts) Regulations, 2000	
(d) Long-term loans and advances			
loan/ advance	Loan/advance to the foreign entity	FEM (Transfer or issue of any foreign security) Regulations, 2004 read with Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (FED Master Direction No. 15/2015-16)	
(e) Other non-current assets			
Assets on lease	Export of goods on lease rentals/hire charges	FEM (Export of Goods and Services) Regulations, 2015 read with Master Direction – Export of Goods and Services (FED Master Direction No. 16/2015-16)	
(2) CURRENT ASSETS			
(a) Current investments			

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Investment in listed overseas companies	Portfolio investment overseas	Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 read with Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (FED Master Direction No. 15/2015-16)	No Change Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares and (ii) bonds / fixed income securities, rated not below investment grade by accredited / registered credit rating agencies, issued by listed overseas companies.
Investment in debt instruments of overseas company	Overseas investment	Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 read with Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (FED Master Direction No. 15/2015-16)	An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.
(b) Inventories			
(c) Trade receivables			
Debtors	Export Proceeds	FEM (Export of Goods and Services) Regulations, 2015 read with Master Direction – Export of Goods and Services (FED Master Direction No. 16/2015-16)	No Change Period of realization and repatriation of export proceeds shall be nine months from the date of export for all exporters.
Bad debts	Writing off of exports proceeds	FEM (Export of Goods and Services) Regulations, 2015 read with Master Direction – Export of Goods and Services (FED Master Direction No. 16/2015-16)	
(d) Cash and cash equivalents			
Bank Account	Foreign Currency account in India or Bank Account outside	FEM (Foreign Currency Accounts by a person	

	India	resident in India) Regulations, 2015	
(e) Short-term loans and advances			
Prepaid Invoice	Advance remittances for imports	FEM (Current Account Transactions) Rules, 2000	
(f) Other current assets			
Pre-operative expense	Pre incorporation expenses	FEM (Current Account Transactions) Rules, 2000	A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed under the automatic route and there are no FDI linked performance conditions, may issue capital instruments to the said non-resident entity against pre-incorporation/ preoperative expenses incurred by the said non-resident entity up to a limit of five per cent of its authorised capital (as defined in the Companies Act, 2013) or USD 500,000 whichever is less, subject to the following conditions: (a) Form FC-GPR, as prescribed in the Master Direction on Reporting as amended from time to time, is filed by the Indian company within thirty days from the date of issue of capital instruments but not later than one year from the date of incorporation. (b) A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/ pre-operative expenses against which capital instruments have been issued has been utilized for the purpose for which it was received should be submitted with the Form

			FC-GPR. Pre-incorporation/ pre-operative expenses will include amounts remitted to the investee Company's account or to the investor's account in India if it exists or to any consultant or attorney or to any other material/ service provider for expenditure relating to incorporation or necessary for commencement of operations.
TOTAL			
CONTINGENT LIABILITY AND COMMITMENTS			
Contingent liability			
Guarantee	Contingent liability	FEM (Guarantees) Regulations, 2000	
Security	Contingent Liability (pledge of immovable property, securities etc.)	FEM (Borrowing and lending in Foreign Exchange) Regulations, 2000 read with Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers (FED Master Direction No.5/2015-16)	
Commitments			
Forward contracts outstanding	Commitment	Foreign Exchange Management (Foreign exchange derivative contracts) Regulations, 2000	Currently, persons resident in India and Foreign Portfolio Investor (FPIs) are allowed to take a long (bought) or short (sold) position in USD-INR upto USD 15 million per exchange without having to establish existence of

			<p>underlying exposure. In addition, residents & FPIs are allowed to take long or short positions in EUR-INR, GBP-INR and JPY-INR pairs, all put together, upto USD 5 million equivalent per exchange without having to establish existence of any underlying exposure.</p> <p>RBI has now decided to permit persons resident in India and FPIs to take positions (long or short), without having to establish existence of underlying exposure, upto a single limit of USD 100 million equivalent across all currency pairs involving INR, put together, and combined across all exchanges.</p>
Options contracts outstanding	Commitment	Foreign Exchange Management (Foreign exchange derivative contracts) Regulations, 2000	

Other Updates :

Joint Audit of Investee Companies

Where a person resident outside India (PROI) who has made foreign investment, specifies a particular auditor/ audit firm with an international network, then the audit of the Indian investee company shall be undertaken by two or more auditors not forming part of the same network.

New instrument by the name 'Convertible Note (CN)'

CN can be issued by a Startup Company. Startup Company can receive money under this instrument initially as debt, which is repayable at the option of the holder or which is convertible into equity shares within a period not exceeding five years from the date of issue. Though initially CN shall be in the nature of 'debt', the policy doesn't have any reference to rate of interest etc., and hence it seems that such note cannot be in the nature of interest bearing loan. The issue of such CN has to be for an amount of Rs. 25 lacs or more in a single tranche. Issue of shares against such CN has to be in accordance with Schedule 1 of Notification No.20 (FDI Schedule) of FEMA. i.e. pricing and valuation norms needs to be adhered to. The reporting guidelines shall be prescribed by RBI. RBI shall also prescribe pricing guidelines for transfer of such CN from Non Resident to Resident as well as to Non Resident.

Acquisition/ transfer by a Non- Resident Indian (NRI) | | Newly inserted provisions Acquisition of immovable property

- a. An NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India.
- b. An NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farm house) in India from person resident in India or from an NRI or an OCI who in any case is a relative as defined in section 2(77) of the Companies Act, 2013.
- c. An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.
- d. An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident in India

Transfer of immovable property

- a) An NRI or an OCI may transfer any immovable property in India to a person resident in India;
- b) An NRI or an OCI may transfer any immovable property (other than agricultural land or plantation property or farm house) to an NRI or ¹⁹an OCI. **In case the transfer is by way of gift the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.**

Joint acquisition by the spouse of an NRI or an OCI

- a) A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.
- b) Consideration for transfers made under this para should be out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to non-resident account of the person concerned maintained in accordance with the Act or the rules framed thereunder. Payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned in this para.
- c) The marriage should have been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.
- d) The non-resident spouse should not otherwise be prohibited from such acquisition.

Acquisition by a Long-Term Visa holder

- a) A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for self-employment.
- b) The property should not be located in and around restricted/ protected areas so notified by the Central Government or cantonment areas.
- c) The person should submit a declaration to the Revenue Authority of the district where the property is located specifying the source of funds and that he/ she is residing in India on a LTV.
- d) The registration documents of the property should mention the nationality and the fact that such person is on a LTV.
- e) The property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities.
- f) A copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division).
- g) Sale of the immovable property so acquired is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned.
- h) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.
- i) An authorised dealer which is an Indian correspondent of an overseas lender may create a mortgage on an immovable property in India owned by an NRI or an OCI who is a director of a company outside India, for a loan to be availed by the company outside India from the said overseas lender subject to the following conditions:
 - The funds should be used by the borrowing company only for its core business purposes overseas; and
 - In case of invocation of charge the authorised dealer should sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.

A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.