

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
(FC Section)

Press Note No 3 (2009 Series)

Subject: Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities.

At present, the transfer of shares from residents to non-residents, including acquisition of shares in an existing company, is on the automatic route, subject to the sectoral policy on FDI. Concerns have been raised on recent acquisitions of certain Indian companies by non-resident entities in sectors with caps. Accordingly, guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities have been formulated and are enumerated below.

2.0 Definitions:

2.1 The term ‘Resident Indian Citizen’ shall be interpreted in line with the definition of ‘person resident in India’ as per FEMA, 1999, read in conjunction with the Indian Citizenship Act.

2.2 A ‘non resident entity’ means a ‘person resident outside India’ as defined under FEMA 1999.

2.3 The term ‘Indian Company’ means a company registered or incorporated in India as per the Indian Companies Act, 1956.

2.4 For the purpose of these guidelines, an Indian company may be taken as being:

- **“owned”** by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if more than 50% of the equity interest in it is beneficially owned by resident Indian citizens and Indian companies, which are owned and controlled ultimately by resident Indian citizens;

- **“controlled”** by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors.

2.5 Further, for the above purpose, an Indian company may be taken as being:

- **“owned”** by ‘non resident entities’, if more than 50% of the equity interest in it is beneficially owned by non-residents

- **“controlled”** by ‘non resident entities’, if non-residents have the power to appoint a majority of its directors.

2.6 Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and convertible preference shares, regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

3.0 **Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities in sectors with caps:**

3.1 In sectors with caps, including *inter alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

3.1.1 An Indian company is being established with foreign investment and is owned by a non-resident entity or

3.1.2 An Indian company is being established with foreign investment and is controlled by a non-resident entity or

3.1.3 The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a

consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc. or

3.1.4 The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc.

3.2 It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

4.0 These guidelines will issue in modification of paragraph 2(e) of Press Note 4 of 2006 and will be effective from the date of issue of this Press Note. FDI policy announced vide Annex to Press Note 7(2008) dated 16th June 2008 stands amplified to the above extent.

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