

**Reserve Bank of India
Foreign Exchange Department
Central Office
Mumbai – 400 001**

Notification No.FEMA. 381/2016-RB

December 07, 2016

**Foreign Exchange Management (Transfer or Issue of Security by a Person
Resident outside India) (Eighteenth Amendment) Regulations, 2016**

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](#)) (hereinafter referred to as 'the Principal Regulations'), 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) (Eighteenth Amendment) Regulations, 2016.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment to Schedule 1

In Annex B to Schedule 1 of 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](#)), the following paragraphs shall be substituted with the following, namely:

SL. No	Sector/Activity	Foreign Investment Cap (%)	Entry Route
Agriculture			
1.	Agriculture & Animal Husbandry		
	a) Floriculture, Horticulture and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; and d) Services related to agro and allied sectors. Note: Other than the above, foreign investment is not allowed in any other agricultural sector/activity	100%	Automatic
1.1	Other Conditions		
	The term 'under controlled conditions' covers the following: (i) 'Cultivation under controlled conditions' for the categories of floriculture, horticulture, cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically.		
5	Manufacturing	100%	Automatic
	Subject to the provisions of these Regulations, foreign investment in 'manufacturing' sector is under		

	automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval. Notwithstanding the foreign investment policy provisions on trading sector, 100% foreign investment under Government approval route is allowed for trading, including through e-commerce, in respect of food products manufactured and/or produced in India. Applications for foreign investment in food products retail trading would be processed in the Department of Industrial Policy & Promotion before being considered by the Government for approval.		
6.	Defence		
6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic route up to 49% Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded.
6.2	Other Conditions		
	<ul style="list-style-type: none">i. Infusion of fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.ii. 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.iii. Foreign investment in the sector is subject to security clearance and guidelines of the Ministry of Defence.iv. Investee 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.		
Services Sector			
Information Services			
7.	Broadcasting		
7.1	Broadcasting Carriage Services		
7.1.1	(1) Teleports (setting up of up-linking HUBs/Teleports); (2) Direct to Home (DTH); (3) Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) Mobile TV; (5) Headend-in-the Sky Broadcasting Service (HITS)	100%	Automatic
7.1.2	Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)).	100%	Automatic
	Note: Infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval		
9.	Civil Aviation		

9.2	Airports		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic
16.3	Single Brand Retail trading (SBRT)	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) Foreign investment in Single Brand product retail trading would be subject to the following conditions:</p> <ol style="list-style-type: none"> Products to be sold should be of a 'Single Brand' only. 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. 'Single Brand' product retail trading would cover only products which are branded during manufacturing. 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. In respect of proposals involving foreign investment 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, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year of the commencement of the business i.e. opening of the first store. Thereafter, it would have to be met on an annual basis. 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. 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 foreign investment 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 categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of foreign investment 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"> Conditions mentioned at Para (2) (b) & (2) (d) above will not be applicable for undertaking Single Brand Retail Trading (SBRT) of Indian brands. An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. 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 		

	<p>sources, at most 30% from Indian manufacturers.</p> <p>iv. Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens.</p> <p>v. Sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, provisions of Para (2) (e) above will be applicable.</p>		
17.	Pharmaceuticals		
17.1	Greenfield	100%	Automatic
17.2	Brownfield	100%	Automatic up to 74% Government route beyond 74%
17.3	Other Conditions		
	<p>(i) 'Non-compete' clause would not be allowed in automatic or government approval route except in special circumstances with the approval of the Foreign Investment Promotion Board (FIPB).</p> <p>(ii) The prospective investor and the prospective investee are required to provide a certificate along with the FIPB application as given at Para 17.4.</p> <p>(iii) Government may incorporate appropriate conditions for foreign investment in brownfield cases, at the time of granting approval.</p> <p>(iv) foreign investment in brownfield pharmaceuticals, under both automatic and government approval routes, is further subject to compliance of following conditions:</p> <p>a) The production level of National List of Essential Medicines (NLEM) drugs and/or consumables and their supply to the domestic market at the time of induction of foreign investment, being maintained over the next five years at an absolute quantitative level. The benchmark for this level would be decided with reference to the level of production of NLEM drugs and/or consumables in the three financial years, immediately preceding the year of induction of foreign investment. Of these, the highest level of production in any of these three years would be taken as the level.</p> <p>b) Research and Development (R&D) expenses being maintained in value terms for 5 years at an absolute quantitative level at the time of induction of foreign investment. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years immediately preceding the year of induction of foreign investment.</p> <p>c) The administrative Ministry will be provided complete information pertaining to the transfer of technology, if any, along with induction of foreign investment into the investee company.</p> <p>d) The administrative Ministry (s) i.e. Ministry of Health and Family Welfare, Department of Pharmaceuticals or any other regulatory Agency/Development as notified by Central Governemnt from time to time, will monitor the compliance of conditionalities.</p> <p>Note :</p> <p>i. foreign investment up to 100% under the automatic route is permitted for manufacturing of medical devices. The above mentioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.</p> <p>ii. Medical device means :-</p> <p>a) Any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of :-</p> <p>(aa) Diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;</p> <p>(ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;</p> <p>(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;</p> <p>(ad) supporting or sustaining life;</p> <p>(ae) disinfection of medical devices;</p> <p>(af) control of conception;</p> <p>and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;</p> <p>b) an accessory to such an instrument, apparatus, appliance, material or other article;</p>		

	<p>c) a device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of in vitro examination of specimens derived from the human body or animals.</p> <p>iii. The definition of medical device at Note (ii) above would be subject to the amendment in Drugs and Cosmetics Act, 1940, as amended from time to time.</p>
17.4	<p>Certificate to be Furnished by the Prospective Investor as well as the Prospective Recipient Entity</p> <p>It is certified that the following is the complete list of all inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity</p> <p>1.</p> <p>2.</p> <p>3.</p> <p>(copies of all agreements to be enclosed)</p> <p>It is also certified that none of the inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity contain any non-compete clause in any form whatsoever.</p> <p>It is further certified that there are no other contracts/agreements between the foreign investor(s) and investee brownfield pharma entity other than those listed above.</p> <p>The foreign investor(s) and investee brownfield pharma entity undertake to submit to the FIPB any inter-se agreements that may be entered into between them subsequent to the submission and consideration of this application.</p>

(Rohit Jain)
Chief General Manager

Foot Note:-

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. No.818(E) dated 31.12.2013
G.S.R. No.805(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. 435 (E) dated 08.07.2014
G.S.R.No. 400 (E) dated 12.06.2014
G.S.R.No. 436 (E) dated 08.07.2014
G.S.R.No. 487 (E) dated 11.07.2014
G.S.R.No. 632 (E) dated 02.09.2014
G.S.R.No. 798 (E) dated 13.11.2014
G.S.R.No. 799 (E) dated 13.11.2014
G.S.R.No. 800 (E) dated 13.11.2014
G.S.R.No. 829 (E) dated 21.11.2014
G.S.R.No. 906(E) dated 22.12.2014
G.S.R.No. 914 (E) dated 24.12.2014
G.S.R.No. 30 (E) dated 14.01.2015
G.S.R.No. 183 (E) dated 12.03.2015
G.S.R.No. 284 (E) dated 13.04.2015
G.S.R.No. 484 (E) dated 11.06.2015
G.S.R.No. 745 (E) dated 30.09.2015
G.S.R.No. 759 (E) dated 06.10.2015

G.S.R.No. 823 (E) dated 30.10.2015
G.S.R.No. 858 (E) dated 16.11.2015
G.S.R.No. 983 (E) dated 17.12.2015
G.S.R.No. 165 (E) dated 15.02.2016
G.S.R.No. 166 (E) dated 15.02.2016
G.S.R.No. 369 (E) dated 30.03.2016
G.S.R.No. 465 (E) dated 28.04.2016
G.S.R.No. 537 (E) dated 20.05.2016
G.S.R.No. 879 (E) dated 09.09.2016
G.S.R.No. 1002 (E) dated 24.10.2016
G.S.R.No. 1003 (E) dated 24.10.2016
G.S.R.No. 1015 (E) dated 27.10.2016
G.S.R.No. 1042 (E) dated 04.11.2016

Published in the Official Gazette of Government of
India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 07.12.2016- G.S.R.No.1118 (E)