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FOREIGN INVESTMENT IN INDIA

Introduction

- 10.1** (i) Foreign investment in India is subject to policy guidelines framed by the Government of India from time to time in accordance with its Industrial Policy. In terms of the

Industrial Policy announced by the Government of India on 24th July 1991 followed by subsequent guidelines issued by them, foreign equity upto 50%/51%/74%, as the case may be, is permitted by Reserve Bank under the Automatic Route in specified industries/services sector. Applications which do not conform to the parameters of the Automatic Route, are required to be made to the Secretariat for Industrial Assistance (SIA), Ministry of Industry, Government of India, New Delhi. Foreign Institutional Investors are permitted to invest in all securities in primary and secondary markets in India as per guidelines issued by Ministry of Finance, Government of India, New Delhi.

(ii) A wide range of facilities for making investments in India in shares and securities, bank deposits, company deposits, etc. is available to individuals of Indian nationality or origin resident outside India (NRIs) and overseas corporate bodies predominantly owned by such persons (OCBs). They are subject to different rules and investments both with repatriation and non-repatriation benefits are permitted under various schemes.

- (iii) Foreign investment in India is also subject to regulation through the various

provisions of FERA 1973. However, once foreign investment is approved by Government under its foreign investment and industrial policy, requisite approvals under FERA 1973 are granted by Reserve Bank in pursuance of the Government approval/guidelines. While the relative provisions of FERA 1973 have been explained in Part 'A', detailed regulations governing investments and certain ancillary matters such as remittance of dividend, royalty and technical know-how fee, sale/transfer of shares, repatriation of capital, etc. are given in Part 'B'. The various schemes for investment by NRIs/OCBs and other matters relating to loans, overdrafts and guarantees to non-residents have been explained in Parts 'C' and 'D' respectively.

NOTE: *Regulations relating to foreign investment in immovable property in India have been explained in*

PART A - INVESTMENTS BY NON-RESIDENTS IN GENERAL

Purchase of Shares and Securities by Non-residents

10A.1 In terms of Section 29(1)(b) of FERA 1973, no person resident outside India, whether an individual or a firm/company (other than a banking company) incorporated outside India,

can acquire shares of any company carrying on trading, commercial or industrial activity in India without permission of Reserve Bank. Permission of Reserve Bank is also required for transfer or issue of any security (which includes shares, debentures, bonds, etc.) to a person resident outside India in terms of Sections 19(1)(b) or 19(1)(d) of the Act. While granting permission for transfer or issue of shares to a non-resident investor under Section 19(1)(b) or 19(1)(d), permission under Section 29(1)(b) for purchase of shares by him is granted simultaneously and hence it is not generally necessary for non-resident investors to apply separately for permission to purchase shares in Indian companies in such cases.

NOTES A. *Issue and transfer of Indian rupee shares and securities to any person resident in Nepal requires permission of Reserve Bank.*

B. *Section 19(1)(b) of the Act also prohibits creation or transfer of any interest in a security in favour of a non-resident. This prohibition also precludes pledging of any security to or in favour of a non-resident (e.g. as collateral or prime security for credit facilities abroad) or utilising them for forming a trust or settlement of which a non-resident is the beneficiary .*

C. Reserve Bank has granted general permission (i) to persons of Indian nationality/origin(NRIs) to subscribe to the Memorandum and Articles of Association and to take up shares of an Indian company for its incorporation and (ii) to an Indian company to issue shares to NRIs subject to certain conditions. The scope of the general permission has been explained in paragraph

Shares of Indian Companies held by Non-residents at the commencement of FERA 1973

10A.2 In terms of Section 29(4)(a) of FERA 1973, non-resident individuals (including Indian nationals), firms, companies, etc. holding shares of Indian companies which were

acquired before the commencement of the Act i.e. 1st January 1974, had to take permission of Reserve Bank for continuing to hold the shares. Reserve Bank had issued holding licences in these cases indicating the eligibility of the non-resident holder in regard to repatriation or non-repatriation of the capital or income earned thereon depending upon the condition imposed in this regard while permitting the original investment.

Transfer of Shares/Securities from Non-residents to Non-residents

10A.3 Until 1992, transfer of shares of a company registered in India made by a person resident

outside India to another person also resident outside India was required to be confirmed by Reserve Bank in terms of Section 19(5) of FERA 1973. After the amendment to FERA 1973 made in January 1993, no such confirmation of Reserve Bank is required to be obtained for transfer of shares (as also bonds or debentures) between two non-residents. The non-resident transferee, however, requires permission under Section 29(1)(b) of FERA 1973 for purchase of the shares or the Indian company for registering the transfer in favour of another non-resident under Section 19(4) of FERA 1973. Such transfers will, therefore, not be registered by the Indian company unless the non-resident purchaser has obtained the necessary permission under Section 29 *ibid* (Also see paragraph [10A.5](#)).

Transfer of Shares/Bonds/Debentures from Non-residents to Residents

10A.4 In terms of Section 19(5) of FERA 1973, no transfer of shares/bonds/debentures of a company registered in India made by a person resident outside India to another person

resident in India will be valid unless the transfer is confirmed by Reserve Bank on an application made to it by the transferor or the transferee. Reserve Bank has, however, exempted transfer of shares, bonds or debentures of Indian companies held by persons of Indian nationality/origin(NRIs) on both repatriation and non-repatriation basis to residents as also transfer of shares, bonds or debentures by way of gift from the purview of Section 19(5) through issue of Notifications under Section 19(6) of the Act, subject to fulfilment of certain conditions. The scope of the exemption has been explained in paragraphs 10C.26 to 10C.28.

Responsibility of Companies Registering Transfer of Shares/Securities in favour of Non-residents

10A.5 In terms of clause (a) of Section 19(4) of FERA 1973 no person can enter transfer of securities in any register or book in which securities are registered or inscribed, if he has any ground to

suspect that the transfer involves a contravention of the provisions of Section 19, i.e. issue, transfer or creation of interest in any security to/in favour of a person resident outside India. Clause (b) of this Section prohibits the registration of the foreign address of the holder of a security except by way of substitution for any such address in the same country or for which permission has been granted by Reserve Bank. Before registering any transfer of shares/securities in the names of non-residents, companies concerned must obtain permission of Reserve Bank except where such permission has already been obtained by transferor/transferee.

NOTE: *See paragraphs [10C.30](#) and [10C.31](#) regarding general permission granted to Indian companies for recording overseas address consequent on change of status of the security holder from resident to non-resident or for conversion of holdings into joint holdings between residents/non-residents.*

Safe Custody of Shares/Securities

10A.6 Authorised dealers and financial institutions extending custodial services may hold in

their safe custody, shares and securities issued/transferred to non-residents and also release the shares/securities from non-resident safe custody account for purposes like recording change of name, sale, etc., provided the relative purchase/sale/transfer is covered by the general or special permission of Reserve Bank.

General rule for Remittance of Dividend/Interest/ Sale proceeds of Securities

10A.7 As a general rule, the dividend, interest and other income on shares/securities and sale proceeds of shares and securities originally purchased out of funds held in the investor's

Ordinary Non-resident Rupee(NRO) accounts as also those acquired subject to the condition that they will not carry the right of repatriation are required to be credited to the investor's NRO account. In other cases, authorised dealers may remit the net amount of dividend, interest, sale proceeds etc. after deducting Indian taxes at applicable rates or credit them to the investor's NRE/FCNR accounts to the extent permitted by Reserve Bank [see paragraphs [10B.6](#), [10B.7](#) and [10C.24](#)].

Export of Shares/Securities

10A.8 In terms of Section 19(1)(a) of FERA 1973, export of any security (which includes shares, bonds, debentures, etc.) to any place outside India requires permission of Reserve Bank.

NOTES: A. Unit Trust of India has been granted general permission by Reserve Bank to export certificates covering units purchased by non-resident investors from out of foreign exchange remittances to India or from their non-resident accounts in India.

B. At the time of granting permission for purchase/issue of shares/bonds/debentures by/to non-residents, permission for export of the share/bond/debenture certificates is generally granted by Reserve Bank. Permission for export of shares/securities will, therefore, be required to be obtained only in cases where such a permission has not been given.

Reporting of investment inflows

10A.9 Reserve Bank has granted general permission under Sections 19(1)(d), 19(1)(a) and 29(1)(b) of the Foreign Exchange Regulation Act, 1973 to Indian companies for issue and exports of shares/securities to non-resident investors, and to non-resident investor to acquire shares/securities of Indian companies under various non-resident direct investment schemes. In terms of Reserve Bank Notification Nos.FERA 188 and 189/RB-98 dated 11th November 1998 it is obligatory on the part of Indian companies seeking non-resident investment to file a report containing the following particulars with the Regional Office of Reserve Bank not later than 30 days from the date of receipt of remittance.

- (a) Name of the foreign investor;
- (b) Country of residents or incorporation of the foreign investor;
- (c) Date of receipt of remittance and its rupee equivalent;
- (d) Name and address of the authorised dealer in India through whom the remittance is received;
- (e) Number and date of SIA/FIPB approval in respect of which remittance is received.

This requirement is in addition to the submission of the prescribed declaration in form FC(RBI)/ISD(R)/ISD, as the case may be, alongwith the documents, within 30 days from the date of issue of shares.

PART B - (i) INVESTMENT BY FOREIGN COMPANIES UNDER TECHNICAL/ FINANCIAL COLLABORATIONS

(ii) INVESTMENT BY FOREIGN INSTITUTIONAL INVESTORS Approvals for Technical Collaboration Agreements

10B.1 (i) Under the old procedure, all proposals for entering into foreign technical

collaborations were required to be approved by the Government of India and on

receipt of Government's approval, formal authorisations under FERA 1973 were being issued by Reserve Bank. Copies of collaboration agreements were required to be filed with Reserve Bank/Government of India. However, under the revised liberalised procedure Reserve Bank considers under the Automatic Route, applications from Indian companies for foreign technical collaborations, for lumpsum payment of technical know-how fee upto Rs.one crore and/or royalty up to 5% on domestic sales and 8% on exports over a period of 7 years from the date of commencement of commercial production or 10 years from the date of agreement, whichever is earlier. Since November 1996, the limit for lumpsum payment of technical know-how fee has been increased from Rs. one crore to US \$ 2 million. Applications for foreign technical collaborations under the Automatic Route should be made to the concerned regional office of Reserve Bank in form FT (RBI). Proposals which do not conform to the above parameters would require the approval of Secretariat for Industrial Assistance (SIA), Ministry of Industry, Government of India, New Delhi. The extension of foreign technical collaboration agreements (including those approved by Reserve Bank) would also need the approval of SIA, Government of India.

(ii) In cases where the collaboration is approved by Reserve Bank/Government

of India, a letter of approval will be issued indicating the terms and conditions of the approval. A copy of the letter of approval will also be issued by Reserve Bank to the designated branch of an

authorised dealer (as mentioned in the application) through whom remittances of technical know-how fee and/or royalty are to be made by the Indian company. A registration number will be granted by Reserve Bank when an approval is granted for foreign technical collaboration under the Automatic Route. Also in cases where the approval for collaboration is granted by the Government, the Indian company should obtain a registration number for the collaboration agreement from the concerned regional office of Reserve Bank before remittances under the agreement are made.

(iii) The Indian company which has obtained approval for the foreign collaboration

agreement from the Reserve Bank/Government should file a copy of the agreement with the designated branch of the authorised dealer through whom remittances falling due under the collaboration agreement would be made. The Indian company should also submit a Return in form TCD to the concerned office of Reserve Bank in the first fortnight of January each year showing payments made under the collaboration during the preceding calendar year duly countersigned by the designated branch of an authorised dealer.

(iv) Indian companies which had executed collaboration agreements under

the old procedure and the agreements are subsisting should switch over to the revised procedure for making payments under the agreement (see paragraph 10B.5). Application for the purpose should be made to the concerned office of the Reserve Bank together with a Return in Form TCD showing details of all payments made under the collaboration till the 31st December of the previous year. Reserve Bank will grant a registration number and approval to the concerned authorised dealer to effect future remittances.

Investment in Shares by Foreign Collaborators

10B.2 (i) As per the Foreign Investment guidelines issued by the Government of India, Ministry of Industry, foreign investment (equity/preference shares) upto certain specified limits would be permitted by Reserve Bank under Automatic Route as under:

- (a) Foreign investment (equity/preference) upto 50% in respect of Mining activities referred to in Part 'A' of Annexure III to Ministry of Industry's Press Note No.14 (1997 Series) dated 8th October 1997;
- (b) Foreign investment (equity/preference) upto 51% in (i) industries/items included in part 'B' of Annexure III to Ministry of Industry's Press Note No.14 (1997 series) dated 8th October 1997 and (ii) a trading company primarily engaged in export activity;
- (c) Foreign investment (equity/preference) upto 74% in industries/items included in part 'C' of Annexure III to Ministry of Industry's Press Note No.14 (1997 series) dated 8th October 1997;
- (d) Foreign Investment upto 100% in industries/items included in Part 'D' of Annexure III, to Ministry of Industry's Press Note No.14(1997 Series) as amended from time to time provided the foreign investment in a project does not exceed Rs.1500 crores.

Existing Indian companies are also permitted to raise foreign investment (equity/preference) to the level permissible as indicated above under the Automatic Route in case the company is engaged in the manufacture of item/s included in the Annexure III industries or the proposed expansion of capital is for undertaking an activity covered under the said Annexure. Raising of foreign investment (equity/preference) upto 51% in an existing trading company [cf. subparagraph 10B.,2(i)(b)(i) above] will be permitted if the company has already been registered as Export/Trading/Star Trading House.

Reserve Bank, vide its [Notifications No.F.E.R.A.180/98-RB](#) dated 13th January 1998 as amended by Notification No.F.E.R.A.188/98-RB dated 11th November 1998 has granted general permission under Sections 19(1) (a), 19(1)(d) and 29(1)(b) of Foreign Exchange Regulation Act, 1973 to Indian companies for issue and export of equity/preference shares to foreign investors in respect of eligible investments under the Automatic Route. As a result of the general permission, Indian companies seeking foreign investment (equity/preference) under the Automatic Route of Reserve Bank and satisfying the conditions laid down in the said Notifications will not require prior clearance of Reserve Bank. Such Indian companies may issue shares to foreign investors and file a declaration in [form FC\(RBI\)](#) together with the required documents with the concerned Regional Office of Reserve Bank under whose jurisdiction their registered office is situated, within **30 days from the date of issue** of shares to foreign investors/collaborators. Accordingly, non-residents who have been issued shares under the general permission granted by this Notification would not need specific approval under Section 29(1)(b) of FERA 1973 from Reserve Bank.

Issue of preference shares to Non-Resident Indians/Overseas Corporate Bodies is also permitted under 100% Scheme.

(ii) Applications for foreign investment which do not satisfy the parameters prescribed for Automatic Approval by Reserve Bank or in 100% Export Oriented Units located outside the Export Processing Zones are required to be made to the Secretariat for Industrial Assistance (SIA)/Foreign Investment Promotion Board (FIPB), as the case may be. If the unit is located in any of the Export Processing Zones, applications should be made to the Development Commissioner of the Export Processing Zone concerned.

(iii) With a view to simplifying the procedure under SIA/FIPB route, Reserve Bank, vide its [Notification No.F.E.R.A.182/98-RB](#) dated 10th February 1998 has granted general permission under Sections 19(1) and 29(1)(b) of FERA 1973 to Indian companies for issue and export of shares/securities to foreign investors/collaborators in respect of such investments approved by SIA/FIPB. As a result of the general permission, Indian companies seeking foreign investments based on the approvals granted by SIA/FIPB and satisfying the conditions laid down in the notification will not require any prior clearance of Reserve Bank. Such Indian companies may issue shares to foreign investors/collaborators and file a declaration in [form ISD](#) together with the required documents, with the concerned Regional Office of Reserve Bank under whose jurisdiction their Registered Office is situated, within 30 days from the date of issue of shares/securities to foreign investors/collaborators. In the case of composite approvals granted by SIA/FIPB for foreign financial as also technical collaborations, while issue of shares/securities will be governed by the general permission, in respect of technical

collaboration, the procedure contained in [paragraph 10B.1](#) should be followed

(iv) Retention of share subscriptions in foreign currency accounts in India/abroad for financing import of capital goods, etc. requires prior approval of Reserve Bank. Reserve Bank will also permit receipt of interest-free loans as advance share subscription from the collaborators to be adjusted against share capital contribution later, for meeting expenses in India of the Indian company.

NOTE: *Indian companies intending to raise foreign equity through preferential allotment of shares to non-residents are required to comply with the guidelines issued by Government of India, Reserve Bank of India, SEBI and other regulatory authorities from time to time.*

10B.3 Issue of Rights/Bonus Shares to Non-Residents

In terms of Notification No.F.E.R.A.208/99-RB dated 31st July 1999, Reserve Bank has granted general permission to (a) Indian Companies to issue rights/bonus shares to Non-Residents and to send such shares out of India and (b) non-residents to acquire such shares, subject to the following conditions :

1. the issue of rights/bonus shares does not bring any change in the percentage of foreign equity already approved.
2. the existing shares on which the rights/bonus shares are proposed to be issued are held by the Non-Resident holders with the Reserve Bank's permission under Section 29 of the F.E.R.A, 1973, and where the shares were issued under the general permission of the Reserve Bank, the Indian Company had made the requisite report to Reserve Bank in Form FC, [form ISD/ISD \(R\)](#) as the case may be.
3. the rights shares are not issued to the Non-Residents at a price lower than that at which the rights shares are offered to resident shareholders.
4. the rights/bonus shares are subject to the same restrictions with regard to repatriability and other conditions as are applicable to the original shares against which rights/bonus shares are issued.
5.
 - (a) in case of foreign nationals and companies incorporated outside India, the consideration is received by way of inward remittance,
 - (b) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE account of the NRI/PIO/OCB concerned,
 - (c) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on non-repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the

FCNR/NRE/NRO/NRSR account of the NRI/PIO/OCB concerned.

6. the original project cost as approved by FIPB does not exceed Rs.600 crores. It may be noted, that issue of rights/bonus shares resulting in increase in the percentage of foreign equity as also issue of shares by companies whose original project cost was more than Rs.600 crores shall continue to require prior approval by Government of India, as per the existing procedure.

Investment by Foreign Institutional Investors

10B.4 (i) Foreign Institutional Investors (FIIs) including pension funds, mutual funds, investment trusts, university funds, endowments, foundations or charitable trusts or charitable societies, etc. are permitted to invest in all securities i.e. equity shares/debentures/PCDs/FCDs/Rights renunciations/warrants of Indian companies listed as well as unlisted, dated Government securities, Treasury Bills and units of domestic mutual fund schemes in the primary and secondary markets. Investments by FIIs will be subject to a ceiling of 24% of the total paid up equity capital of the company. The ceiling would apply to all holdings taken together including conversions out of the fully and partly convertible debentures issued by the company. The holding of a single FII or the concerned FII group in any company would also be subject to a ceiling of 10% of total paid-up equity capital. Indian companies, however, would be permitted to raise the ceiling limit of 24% to 30% provided it has been approved by the Board of Directors of the company and a Special Resolution is passed to that effect by the General Body. The ceiling of 24% or 30%, as the case may be, applicable for investment by FIIs will not include investments made by NRIs/OCBs under the Portfolio Investment Scheme. It will also not include direct foreign investment by a foreign collaborator and investment by FIIs through Off-shore Funds, Global Depository Receipts and Euro-Convertible Bonds.

(ii) FIIs are required to register themselves with Securities and Exchange Board of India (SEBI) before they invest in the Indian capital market. Application for registration should be made by FIIs to SEBI in the prescribed form in duplicate. One copy of the application will be forwarded by SEBI to Reserve Bank. Reserve Bank will grant permission under FERA 1973 to the bank branch designated by the applicant FII to buy/sell equity shares/debentures/warrants/dated Government securities/Treasury Bills/units of domestic mutual funds. Reserve Bank's permission will be initially valid for five years and will be operative only after obtaining registration from SEBI. This permission can be renewed for a further period of five years on request. Reserve Bank's permission would enable the FIIs to buy/sell the securities and remit the income/dividend/sale proceeds after payment of applicable taxes through the designated bank branch. Reserve Bank's permission will also cover investment in shares/debentures of Indian companies in primary market i.e. new issues provided the company has reserved certain quota out of its public issue in favour of FIIs. The designated bank branch is required to submit to Reserve Bank a statement in [form LEC\(FII\)](#) on daily basis in respect of purchases/sales of shares/debentures made for the purpose of monitoring by Reserve Bank the overall ceiling of 24% or 30%, as the case may be, referred to in sub-paragraph (i).

(iii) In order to facilitate making of investments in India and repatriation of income/sale proceeds of such investments, Reserve Bank will permit the designated bank to open a foreign currency denominated account and a special Non-resident Rupee account in the name of FII. The

designated bank branch will also be permitted (a) to transfer funds from foreign currency account to rupee account and vice versa, (b) to make investments out of the balance in the rupee account, (c) to credit sale proceeds of shares and other investments as also dividend/interest earned on the investments to the rupee account and (d) to transfer the repatriable proceeds (net of taxes) from the rupee account to the foreign currency account.

(iv) Reserve Bank vide its Notification No.F.E.R.A.212/99-RB dated 18th October 1999 has granted general permission to mutual funds in India to issue units or similar instruments to FIIs under the schemes approved by Securities and Exchange Board of India and to send such units/instruments out of India to their global custodians, as also to repurchase units/instruments from FIIs (cf. paragraph 10C.16A).

Remittance of Royalties/Technical Fees

10B.5 (i) Reserve Bank has granted general permission to Indian companies for making payment of technical fee/royalty through an authorised dealer designated for

the purpose under the technical collaboration arrangement approved by the Government of India/Reserve Bank, vide its [Notification No. FERA.92/91-RB](#) dated 13th September 1991. Indian companies who have obtained approval from Government of India/Reserve Bank for technical collaborations may, therefore, approach the designated authorised dealer for remittance of technical fee/royalty. The application should be supported by a certificate from the company's auditors, in [form TCK](#) / [TCR](#), and other documents specified in the form. It will be in order for authorised dealers to allow remittances strictly in accordance with the terms and conditions prescribed by Reserve Bank/Government while approving the collaboration provided a registration number for the collaboration has been allotted by Reserve Bank.

(ii) Authorised dealers should maintain a proper record of the collaboration agreements and the remittances allowed thereagainst which should be preserved for a period of five years from the date of expiry of the agreement.

Remittance of Dividend

10B.6 (i) Indian companies intending to remit dividend to their non-resident shareholders should make an application to an authorised dealer in

[Form RCD 1](#), supported by the particulars of non-resident shareholding in [form RCD 2](#) and other documents prescribed in the form. Authorised dealers may allow the remittance of dividend in accordance with the procedure mentioned below.

- (a) Authorised dealers should verify the particulars with reference to the documents submitted in support of the non-resident shareholding and satisfy themselves that necessary permission of the Reserve Bank has been obtained by the non-resident shareholders in terms of Section 29(1)(b) or 29(4)(a) of the Act for purchase/holding of the shares and/or the company has permission under Section 19(1) of the Act for issue of shares to the non-residents and that the terms of the permission do not prohibit remittance of dividend.
- (b) Authorised dealers should also verify that the certificate given in Part 'B' of the [form RCD 1](#) has been properly completed by the company's auditors and specifically confirm on [form A2](#) that they have verified the Reserve Bank's approval for purchase/holding/issue of the shares held by the non-resident beneficiary and it does not prohibit the remittance of dividend.
- (c) Authorised dealers should separately forward one copy of the application in [form RCD 1](#) (without its enclosures) to the office of Reserve Bank within whose jurisdiction the Head/Registered Office of the company is situated, after completing the certificate in Part C thereof.
- (d) The Indian company/authorised dealers should ensure that the reference number, date, etc. of Reserve Bank's permission and the repatriable/non-repatriable nature of the shares/debentures/bonds held by the concerned non-residents are incorporated on the counterfoil of the dividend warrants.

- (ii) As Indian companies are required to remit dividend to all their non-resident

shareholders through the normal banking channels, it is not necessary for them to prepare individual dividend warrants for despatch to such non-resident shareholders. However, dividends due to non-resident shareholders who are not eligible for having the amounts remitted to them abroad or those who wish to have the dividend paid in India for credit to their non-resident accounts, may be paid by issuing individual dividend warrants to their mandatee bankers in India for credit to their Ordinary Non-resident Rupee (NRO) accounts. In cases where dividend is to

be credited to NRO accounts of the non-resident investors, there is no need to follow the procedure in sub-paragraph (i) above.

(iii) As regards the remittance of interim dividend, application may be made by

the company in India to the authorised dealer by letter (in duplicate) enclosing only the [form RCD 2](#) and a copy of the Board Resolution approving the payment of interim dividend. Authorised dealers may allow the remittance of interim dividend subject to what has been stated in paragraph (i) above.

(iv) As regards non-resident investment in consumer goods industries,

the Government/Reserve Bank would stipulate that the dividend outflow should be balanced with inflow on account of export earnings. The balancing is required to be done for a period of 7 years from the date of commencement of commercial production. Reserve Bank's permission is also necessary for carrying on agricultural/plantation activities by FERA companies in terms of Section 29(1)(a) of FERA 1973. Before allowing remittance of dividend in such cases, authorised dealers should verify that items 'C' and 'D' of Part 'B' in the auditor's certificate in [form RCD 1](#) have been properly completed by the company's auditors.

(v) Investment in companies engaged in export trading activity is permitted by

Reserve Bank provided the company registers itself as an Export/Trading/Star Trading House. Authorised dealers should, therefore, before allowing the remittance of dividend by such companies ensure that the company has attained the status of an Export/Trading/Star Trading House.

(vi) In the case of investments by Foreign Institutional Investors (FIIs),

Reserve Bank authorises the designated branch of an authorised dealer to credit the net amount of dividend on the shares purchased to the special non-resident rupee account [see [paragraph 10B.4\(iii\)](#)]. It will, therefore, be in order for companies to pay the dividend amounts to the designated branches of FIIs by way of dividend warrant together with a statement, under the signature of an authorised official, showing the number of shares held by the non-resident shareholder, face value, rate of dividend declared, year/period to which it relates, gross dividend, tax deducted at source, net dividend, and the particulars of Reserve Bank's approval under Section 19(1) 29(1)(b) of FERA, 1973 for issue/purchase of shares.

Remittance of Interest

10B.7 Applications for remittance of interest on bonds or debentures issued to non-residents, should be made by the Indian companies concerned to authorised dealers giving the following particulars -

- (a) Name and address of the non-resident bond or debenture holder
- (b) Nationality or place of incorporation
- (c) Number and face value of the bond/debenture
- (d) Number & date of Reserve Bank approval for issue of bond/debenture along with a certified copy
- (e) Amount of gross interest
- (f) Tax deducted at source
- (g) Net remittable amount

On receipt of the application, authorised dealers may allow the remittance of the net amount of interest i.e. after payment of tax at applicable rate after verifying that the necessary permission of Reserve Bank for issue of the bond/debenture to the non-resident holder was obtained and that it does not prohibit the remittance of interest. **Interest due to non-residents who are not eligible for having it remitted abroad can, however, be credited only to their Ordinary Non-**

resident Rupee (NRO) accounts. The Indian company/authorised dealers should ensure that the reference number, date etc. of Reserve Bank's permission and the repatriable/non-repatriable nature of the bonds/debentures held by the concerned non-residents are incorporated on the counterfoil of interest warrants.

NOTE: *While granting permission for purchase of bonds/debentures with repatriation rights on behalf of the Foreign Institutional Investors, Reserve Bank authorises the designated bank branches to credit interest to the special non-resident rupee account of the investor (see [paragraph 10B.4](#)). The Indian companies concerned may, therefore, send the interest warrants to designated bank branch concerned giving the necessary particulars as indicated above.*

Transfer of Shares/Securities by Non-residents to Residents

10B.8 (i) Applications for transfer of shares by non-resident investors to residents should be made to the concerned Regional Office of Reserve Bank under whose jurisdiction the Head/Registered Office of the company, whose shares are to be transferred, is situated, in [form TS 1](#) together with the documents mentioned therein. These applications will be considered by Reserve Bank in accordance with the following guidelines:

(a) In case the shares to be transferred are traded on Stock Exchange, Reserve Bank will permit such transfers provided the sale is made at the prevailing market price on stock exchange/s through a registered merchant banker or a stock broker.

(b) In the case of transfer of shares by private arrangement (i.e. other than through stock exchange) to a resident, Reserve Bank will satisfy itself that the shares are proposed to be sold at a price arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with ± 5 per cent variation. However, if the disinvestment of shares is by the foreign collaborators/promoters of the Indian company in favour of existing Indian promoters with the objective of passing management control in favour of the resident promoters, the proposal will be considered by Reserve Bank at a price which is higher by up to a ceiling of 25% over the price arrived at as above.

(c) Applications for disinvestment of unlisted/thinly traded shares by non-residents to residents for gross consideration upto Rs.20 lakhs per seller, per company, per annum, will be cleared at mutually agreed price based on any valuation methodology currently in vogue. In respect of transactions exceeding Rs.20 lakhs the non-resident seller will have the following options:

(i) To sell the shares with prior approval of Reserve Bank at higher of the price based on Earning Per Share (EPS) linked to the Price Earning (P/E) multiple and that based on the Net Asset Value (NAV) linked to Book Value (BV) multiple. The NAV per share may be calculated by subtracting the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves except subsidy received in cash, from the total assets and then dividing the amount of

net assets thus arrived at by the number of equity shares. Alternatively, intangible assets may be subtracted from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at should be divided by the number of equity shares. For computing the price based on EPS, the earning per share as per the latest audited balance sheet of the company will be used in conjunction with the average P/E multiple of Bombay Stock Exchange National Index (BSEN) for the calendar month immediately preceding the month in which the application is made. The P/E multiple will be discounted by 40 per cent. Similarly, for computing price based on Net Asset Value, the NAV per share calculated as above will be used in conjunction with the average BV multiple of BSEN during the calendar month immediately preceding the month in which application is made. The BV multiple will be discounted by 40 per cent.

(ii) To sell the thinly traded shares, with the prior approval of Reserve Bank, on stock exchange at the prevailing market price in small lots so that the entire holding is sold in not less than five trading days through screen based trading system.

(iii) To sell the shares, with the prior approval of Reserve Bank, at a price which is lower of the two independent valuations, one by the statutory auditors and the other by a Chartered Accountant or SEBI registered category-I merchant banker, giving a reasoned report in respect of the price.

A share/security will be considered as thinly traded if on the main exchange(s) in India, the annualised trading turnover in that share/security during the preceding six calendar months prior to the month in which the application is submitted, is less than 2 per cent (by number of shares) of the listed stock. For this purpose, the weighted average of the number of shares listed during the said six months period may be taken. In cases of securities with a history of listing and trading of less than six months, the trading turnover may be annualised with reference to the actual number of days for which the stock has been listed.

(ii) In the case of sale of shares of Indian companies listed on a stock exchange in India, the application may be submitted by the transferor or his attorney. Applications for sale/transfer of shares by private arrangement (i.e. other than through stock exchange), may, however, be made either by the transferor or the transferee with a copy of letter of consent for the sale/transfer from other party. While conveying its approval, Reserve Bank will stipulate the conditions subject to which the sale/transfer should be effected.

NOTE: *Transfer of Indian shares and securities standing in the names of persons resident in Nepal to persons resident in India is also subject to the regulations laid down in the above paragraph.*

Repatriation of Capital Investment in India

10B.9 Repatriation of investments made in India is permissible (except where investment

was permitted on specific condition that it will not be eligible for repatriation),

provided the disinvestment has been made with the approval of Reserve Bank (See [paragraph 10B.8](#)). Applications for repatriation of the capital investment should be made to Reserve Bank through an authorised dealer stating the full particulars of the investment, number and date of Reserve Bank's approval for disinvestment, documentary evidence in support of disinvestment proceeds and 'No Objection'/Tax Clearance Certificate from the Indian Income Tax authorities. In cases of sale/transfer of shares and debentures acquired with repatriation rights, repatriation of sale proceeds of bulk holdings (i.e. shares/bonds/debentures exceeding Rs. one lakh in face value or 5% of the company's paid-up capital, whichever is lower) will be permitted only on production of a certificate from a chartered accountant or the concerned company's secretary stating that shares with necessary transfer forms duly signed have been received/lodged with the company for registration in favour of the transferee.

Euro Issues by Indian Companies

10B.10 (i) In terms of the Guidelines issued by the Government of India, vide Ministry of Finance Notification No.S-II(25)CCI-II/89/NRI dated 12 November 1993 (as amended), Indian companies are permitted to raise foreign currency resources through issue of Foreign Currency Convertible Bonds (FCCBs) and/or issue of ordinary equity shares through Global Depository Receipts (GDRs)/American Depository Receipts (ADRs) to foreign investors i.e. institutional investors or individuals (including NRIs) residing abroad. Applications for necessary permission should be made to the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi. After obtaining the necessary approval from the Government, the Indian company should submit an application to the General Manager, Foreign Investment Division, Exchange Control Department, Reserve Bank of India, Central Office, Mumbai - 400 001 enclosing a copy of the application made to the Government and the in-principle/final approval granted by the Government, for necessary permission under FERA 1973 for issue/acquisition of shares to/by non-residents, remittance of issue expenses, opening of foreign currency accounts, etc.

(ii) The FCCBs/GDRs/ADRs issued by Indian companies to non-residents have free convertibility outside India. As regards transfer of shares (on conversion of GDRs/ADRs into shares) in favour of residents, the non-resident holder of GDRs/ADRs should approach the Overseas Depository bank with a request to the Domestic Custodian bank to get the corresponding underlying shares released in favour of the non-resident investor for being sold by the non-resident or for being transferred in the books of the issuing company in the name of the non-resident. Reserve Bank has granted general exemption vide its Notification No.F.E.R.A.185/98-RB dated 19th August 1998, permitting transfer of shares from non-residents to residents, provided (a) such shares were released by the Indian custodian of a GDR/ADR issue against surrender of GDRs/ADRs by the non-resident concerned and (b) the sale is made on a stock exchange or the shares are offered for sale in terms of an offer made under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations,

1997. Authorised dealers may allow remittance of sale proceeds of such underlying shares on verification of the following documents:

- (a) Release Order in original from the Domestic Custodian bank of the GDR/ADR issue.
- (b) Sale note from a SEBI registered broker/merchant banker showing the number of shares transferred and the amount of sale proceeds.
- (c) An undertaking/Accountant's certificate regarding payment of Income-tax (cf.paragraph 3B.10).

Authorised dealers may also allow the non-resident transferor to keep the above mentioned shares in their safe custody till the sale of the shares is effected and to open a non-resident non-interest bearing account to collect the sale proceeds of the shares. A statement giving details, such as the name of the company whose shares have been sold, number of shares sold and the amount remitted should be submitted to the General Manager, Foreign Investment Division, Exchange Control Department, Reserve Bank of India, Central Office, Mumbai 400 001 within a period of 7 days from the date of effecting the remittance.

NOTE : The above general permission will be applicable for transfer of shares underlying GDRs/ADRs through stock exchange or under an offer made under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997. All other cases including transfer of shares, on conversion of FCCBs into shares in favour of residents, will require approval of Reserve Bank.

(ii) A Reserve Bank has granted general exemption vide its Notification No.F.E.R.A.193/99-RB dated 16th March 1999 permitting, (a) the non-resident holders of ADRs/GDRs issued by a company registered in India to acquire the underlying shares against surrender of ADRs/GDRs held by them when such shares are released by the Indian Custodian of the ADR/GDR issue, and (b) the company/depository concerned to enter in its register or books an address outside India of the non-resident holder in respect of the underlying shares issued against surrender of ADRs/GDRs.

(iii) In terms of Government guidelines, issue proceeds are required to be kept in foreign currency and can be utilised only for certain purposes such as for meeting the cost of expansion/diversification /acquisition/import of new plants and machinery, repayment of foreign currency loans, etc. as approved by the Government. Pending deployment of funds for approved purposes, the Indian company is allowed to keep the foreign currency funds abroad with foreign banks (which are rated for short-term obligations as A1 + by Standard & Poor or P1 by Moody's) or with branches of Indian banks abroad as deposits, or to invest them abroad in treasury bills and other monetary instruments with maturity not exceeding one year. Funds raised through GDRs/ADRs, FCCBs and ECBs will also be allowed to be invested in rated certificates of deposit abroad. The issue proceeds can also be kept in foreign currency accounts with authorised dealers/public financial institutions in India authorised to deal in foreign exchange. It will accordingly be in order for authorised dealers/public financial institutions to accept foreign currency deposits from Indian companies out of Euro Issue proceeds subject to the following conditions :

- (a) The foreign currency deposits would carry interest at a rate not exceeding LIBOR for the respective period for which the deposit is accepted.
- b) Authorised dealers/public financial institutions with whom the foreign currency deposits are kept should **not** swap the foreign currency for rupees but use the amounts for on-lending in foreign currency to eligible clients.
- c) Authorised dealers may also invest surplus foreign currency out of such Euro Issue proceeds as permitted in [paragraph 5B.9](#) subject to the condition indicated in (b) above.
- d) Authorised dealers/public financial institutions accepting the foreign currency deposits would be eligible to charge interest at the rate not exceeding 2.5 per cent over six months LIBOR for lending out of such funds.
- e) Authorised dealers will have to comply with the requirements of CRR/SLR as laid down by Reserve Bank from time to time.
- f) The deposits can be converted into Indian rupees only as and when expenditure for approved end uses (including upto a maximum of 15% of the proceeds earmarked for general corporate restructuring) are incurred by the Indian company.
- g) Authorised dealers/public financial institutions accepting such deposits as also the Indian company, as the case may be, should comply with the conditions stipulated by Government of India in their approval letters for such issues.

PART C - NON-RESIDENT INDIAN INVESTMENT

Non-resident Indian Nationals

10C.1 Non-resident Indian nationals generally fall under the following broad categories:

- (a) Indian citizens who stay abroad for employment or for carrying on any business or vocation or for any other purpose in circumstances indicating an indefinite period of stay outside India.
- (b) Indian citizens working abroad on assignments with foreign Governments, Government agencies or international/multinational agencies like United Nations Organisation (UNO), International Monetary Fund (IMF), World Bank (IBRD), etc.
- (c) Officials of Central and State Governments and public sector undertakings deputed abroad on assignments with foreign Governments/agencies/ organisations or posted to their own offices (including Indian Diplomatic Missions) abroad.

NOTE: Non-resident Indians become resident in India only when they come back

to India for employment or for carrying on in India any business or vocation or for any other purpose indicating an indefinite period of stay in India. They are not regarded as persons resident in India during their short visits to India, say, on holiday, leave, etc.

Persons of Indian origin

10C.2 For the purpose of the facility of opening and maintenance of various types of bank accounts and making investments in shares and securities in India, a Foreign

citizen (not being a citizen of Pakistan or Bangladesh) is deemed to be a person of Indian origin if (i) he at any time held an Indian passport, or (ii) he or either of his parents or any of his grand parents was a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1955). A spouse (not being a citizen of Pakistan or Bangladesh) of an Indian citizen or of a person of Indian origin is also treated as a person of Indian origin for the above purposes provided the bank accounts are opened or investments in shares/securities in India are made by such persons only jointly with their NRI spouses.

Overseas Corporate Bodies

10C.3 (i) Overseas corporate bodies predominantly owned by individuals of Indian nationality or origin resident outside India (OCBs) include Overseas

companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons. The various facilities granted to NRIs are also available, with certain exceptions, to OCBs so long as the ownership/beneficial interest held in them by persons of Indian nationality/origin resident outside India continues to be at or above the level of 60%. In order to establish that the ownership interest of or beneficial interest in any OCB held by individuals of Indian nationality/origin resident outside India is not less than 60%, the concerned corporate body/trust should obtain and furnish, at the time of applying for the facility for the first time and thereafter as and when required by Reserve Bank/authorised dealer, a certificate from an overseas auditor/chartered accountant/certified public accountant in [form OAC](#) where the ownership/beneficial interest is directly held by NRIs, and in [form OAC 1](#) where it is held indirectly by NRIs.

(ii) Authorised dealers maintaining bank accounts or making investments in the names of OCBs should obtain an undertaking from each such corporate

body/trust stating that it will promptly intimate to the authorised dealer if the ownership interest or the irrevocable beneficial interest held by NRIs in the OCB falls below the level of 60% at any time. The corporate body/trust should also submit a certificate in form OAC or OAC 1, as appropriate, to the authorised dealer on an annual basis and the authorised dealer should satisfy himself that the ownership/beneficial interest held by NRIs continues to be at or above the level of 60%. If such ownership/beneficial interest is reduced to a level below 60%, the authorised dealer should report the matter to Reserve Bank immediately for instructions together with full particulars of the investments made by the corporate body/trust in its name.

NOTE: *In the case of closely held OCBs i.e. where shareholders belong to the same family or are closely related to each other, certificate in form [OAC](#) / [OAC 1](#) may be submitted in the first instance alongwith documentary evidence to the effect that the shareholders belong to the same family or are closely related to each other. Annual submission of OAC/OAC 1 thereafter is not necessary and it will suffice if a certificate signed by the Managing Director/Chief Executive Officer of the OCB is submitted stating that there is no change in the shareholding pattern since submission of the last certificate.*

General permission to subscribe to the Memorandum and Articles of Association

10C.4 In order to facilitate NRIs to set up new companies in India, Reserve Bank vide its [Notification No.FERA.143/93-RB](#) dated 26th April 1993, has granted general permission under Section 29(1)(b) read with Section 19(1)(d) of the Foreign Exchange Regulation Act, 1973 to NRIs to subscribe to the Memorandum and Articles of Association and to take up the shares of Indian companies for their incorporation. The general permission empowers such Indian companies to issue shares to NRIs provided the total face value of the shares to be issued does not exceed Rs.10,000/- and the company is not engaged in any activity relating to agricultural and plantation. The Indian company is required to file a declaration of the issue to Reserve Bank in [form DSS](#) within period of 90 days from the date of its incorporation. The repatriability or otherwise of this investment will be decided by Reserve Bank while granting permission under Section 19(1)(d) of the Act for issue of further shares to NRIs.

Direct Investment in Firms/Companies in India

10C.5 NRIs are permitted to make direct investment in partnership/proprietorship concerns in India as also by way of subscription to shares/debentures of Indian companies. They are also permitted to place funds in company deposits. Similar facilities are also available to OCBs with certain exceptions. Wherever the investments are allowed with repatriation benefits, the funds for the purpose should be received by inward remittances from abroad or from the investor's NRE/FCNR Accounts. However, in respect of investment on non-repatriation basis, funds in NRO Accounts could also be used.

Investment facility for NRIs resident in Nepal

10C.5A Non-resident Indians resident in Nepal will be permitted to make investments in

India provided the funds for the purpose are remitted in free foreign exchange through proper banking channels. Such investments will either be on repatriation or on non-repatriation basis depending on the terms and conditions applicable under the existing schemes for NRI investment.

I. Investments without Repatriation Benefits

NRIs/OCBs who undertake not to seek at any time repatriation of the capital invested in India and the income earned thereon are permitted to invest on non-repatriation basis, as explained in paragraph 10C.6 to 10C.10. The incomes earned on these investments as and when accrued are required to be credited to the Ordinary Non-resident Rupee (NRO rupee) account of the investor. Reserve Bank would, however, permit repatriation of the net (i.e. after payment of tax) income/interest earned during the financial year 1994-95 and onwards on such investments/deposits in accordance with the procedure laid down in [paragraph 10C.24A](#).

Investment in Partnership/Proprietorship Concerns

10C.6 (i) By its [Notification No. FERA.113/92-RB](#) dated 27th April 1992, Reserve Bank has granted general permission to NRIs to invest by way of capital contribution in any proprietary or partnership concern in India engaged in any industrial, trading or commercial activity on non-repatriation basis subject to the following conditions:

- (a) The amount invested should be remitted from abroad through normal banking channels or by transfer of funds held in investor's bank accounts in India.
- (b) The concern or the NRI does not engage in any agricultural/plantation activity or real estate business i.e. dealing in land and immovable property with a view to earning profit or income therefrom.
- (c) The amount invested and income accruing thereon are not eligible for repatriation outside India and are payable only in non-convertible Indian rupees.

Consequently, it will not be necessary for such partnership/ proprietorship concerns in India to

obtain prior permission of Reserve Bank for receiving capital contribution from NRIs provided the conditions mentioned in the Notification are satisfied. The firm should, however, submit the declaration in [form DIN](#) to the concerned Regional Office of the Reserve Bank in whose jurisdiction it is situate within a period of 90 days from the date of receipt of investment. The profits due to the NRI investor may be credited to his ordinary Non-Resident Account maintained with a bank in India.

Investment in New Issues of Shares/Debentures of Indian Companies

10C.7 (i) By its [Notification No. FERA.114/92-RB](#) dated 27th April 1992 amended upto 24th February 1997 Reserve Bank has granted general permission to NRIs/OCBs to

subscribe to the shares/convertible debentures of an Indian company on non-repatriation basis, and to an Indian company to issue shares or convertible debentures by way of new/rights/bonus issue to NRIs/OCBs on non-repatriation basis provided that the investee company is not engaged in agricultural/plantation activities or real estate business (excluding real estate development i.e. development of property or construction of houses) or chit fund or is not a Nidhi company. The payment for these shares should, however, be received from the NRIs/OCBs by inward remittance or by debit to their NRE/FCNR/NRO accounts maintained with an authorised dealer or an authorised bank in India. Consequently, it will be in order for companies in India to issue shares/convertible debentures to NRIs/OCBs on non-repatriation basis by way of new, rights or bonus issues without the prior approval of Reserve Bank provided the conditions mentioned in the Notification are satisfied. The company should, however, file a declaration in [form DIN](#) within 90 days from the date of receipt of the investment to the concerned Regional Office of the Reserve Bank in whose jurisdiction its registered office is situated. The company may also credit the dividend/interest in respect of the shares/convertible debentures to the investor's NRO account with a bank in India.

(ii) Reserve Bank of India vide its Notification No.F.E.R.A.213/99-RB dated 1st November 1999, has granted general permission to Indian companies to issue, by way of public issue, non-convertible debentures (NCDs) to NRIs/PIOs/OCBs on non-repatriation basis subject to the following conditions:

- i) The amount of subscription should be received by inward remittance from abroad through normal banking channels or by debit to the non-resident's NRE/FCNR/NRO/NRSR account, as the case may be, with an authorised dealer in India. The principal amount representing the investment is not repatriable. If the investment is made out of funds held in NRSR account, the principal as well as interest earned are not repatriable.
- ii) The rate of interest on such NCDs shall not exceed prime lending rate of State Bank of India, plus 300 basis points.
- iii) The minimum period for redemption of such NCDs should be three years.

iv) The company raising funds through NCDs should not be engaged in agricultural/plantation activity, real estate business, trading in transferable development rights (TDRs) or act as Nidhi/Chit Fund company.

v) The issuer company files with the Regional Office of Reserve Bank, not later than thirty days from the date of receipt of remittance, a report containing the following:-

- (a) A list containing names of NRIs/OCBs.
- (b) Country of residence or incorporation of the non-resident investor;
- (c) Amount and date of receipt of remittance and its rupee equivalent;
- (d) Name and address of the authorised dealer in India through whom the remittance is received.

vi) The issuer company files with Regional Office of Reserve Bank, not later than thirty days from the date of issue of NCDs, the following:-

- (a) A list containing names of NRIs/OCBs and the number and face value of NCDs issued to each of them on non-repatriation basis.
- (b) Certified true copy of resolution passed in the meeting of the Board of Directors of the company, indicating the quantum and value of NCDs issued to NRIs/OCBs and residents and other details of the issue such as coupon rate, date of redemption, etc.
- (c) Original Foreign Inward Remittance Certificate (FIRC)/Bank Certificate evidencing receipt of funds, from abroad or from the NRE/FCNR/NRO/NRSR accounts as the case may be, of the NRI/PIO/OCB.
- (d) Memorandum and Articles of Association of the issuer company.
- (e) Certificate in Form OAC/OAC1 indicating the NRI shareholding to the extent of atleast 60% either directly or indirectly in case of investment by OCB.
- (f) Any information sought by the Reserve Bank with reference to the issue of NCDs within such time as may be stipulated.
- (g) An undertaking that the issuer company is not and shall not be engaged in agricultural/plantation activity, real estate business, trading in TDRs or act as Nidhi/Chit Fund company.

Purchase of Shares of Indian Companies by Private Arrangement

10C.8 NRIs/OCBs require permission of Reserve Bank for purchasing shares of Indian companies by

private arrangement. For this purpose, application in [form FNC 7](#) together with the non-repatriation undertaking in [form NRU](#) may be submitted by the non-resident investor to the office of the Reserve Bank in whose jurisdiction the company's Head/Registered Office is situated.

Investment in Domestic Public Sector

and Private Sector Mutual Funds

10C.9 NRIs/OCBs will be permitted to invest in Mutual Funds floated by domestic public sector and

private sector mutual funds on non-repatriation basis. Applications for the purpose should be made to Reserve Bank in [form ISD](#) by the concerned bank/institution. The non-resident investors do not need separate approval from Reserve Bank for the purpose.

Investment in Money Market Mutual Funds (MMMFs)

10C.9 NRIs/OCBs will be permitted to invest, on non-repatriation basis, in Money Market
A Mutual Funds (MMMFs) floated by commercial banks and public sector/private sector

financial institutions, with authorisation from Reserve Bank of India/Securities and Exchange Board of India (SEBI). Applications for the purpose should be made to the Reserve Bank in [form ISD\(R\)](#) by the concerned bank/institution. The NRI/OCB investors do not need separate permission from Reserve Bank for the purpose.

Acceptance of deposits by proprietorship concerns/firms/companies in India on Non-repatriation basis

10C.10 (i) NRIs/OCBs will be permitted to place funds in deposits with firms/companies in India on non-repatriation basis. The application for this purpose may be made by the

depositor or the deposit accepting firm/company to the office of Reserve Bank under whose jurisdiction its Head/Registered Office is situated. In case of acceptance of deposits from NRIs/OCBs under the public deposit scheme, the application for permission should be made by the deposit accepting firm/company through an authorised dealer to the concerned office of Reserve Bank under whose jurisdiction the registered office of the firm/company is situate. No separate application from the non-resident depositor is necessary in such cases.

(ii) Indian companies wishing to raise deposits by issue of Commercial Paper (CP) have to comply with the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989 issued by Reserve Bank (IECD). Reserve Bank (ECD) has granted general permission to Indian companies for issue of CP to NRIs/OCBs vide Notification [Notification](#)

[No.F.E.R.A. 85/89-RB](#) dated 9th October 1989 as amended by Notification No.F.E.R.A. 205/99-RB dated 3rd July 1999 subject to the company complying with the conditions stipulated by Reserve Bank (IECD) and (ECD). Indian companies may accordingly raise deposits from NRIs/OCBs through issue of CP without obtaining specific permission of Reserve Bank (ECD) provided the amount invested will not be allowed to be repatriated outside India and the CP will not be transferable. Payment for investment in CP should be received by remittance from abroad through normal banking channel or by debit to investor's NRE/FCNR/NRO/NRSR account and maturity proceeds should be paid by credit to NRO/NRSR account of the non-resident investor with a bank in India.

NOTE : *OCBs are not permitted to invest in CPs.*

II. Investment with Repatriation Benefits

NRIs/OCBs are also permitted to make investments in Indian firms/companies with repatriation benefits i.e. capital invested and dividend/income earned thereon are allowed to be repatriated outside India, under various schemes as explained in paragraphs 10C.11 to 10C.18.

Investment in New issues of Indian Companies under 40% Scheme

10C.11 (i) NRIs/OCBs are permitted to subscribe to new issues of shares (both equity and preference) and convertible debentures of any new or existing company, with the right of repatriation of capital invested and income earned thereon subject to payment of applicable taxes, provided:

- (a) The issue of equity/preference shares and convertible debentures to NRIs/OCBs with repatriation facility does not exceed 51 per cent of the face value of each new issue of the company concerned, and
- (b) The shares of the company are not listed on any stock exchange, and
- (c) The company is engaged in manufacturing activity **not** being an activity specified in Annexure III to the Statement of Industrial Policy 1991 of Government of India, amended from time to time.

Investment under this scheme can be made for setting up new manufacturing projects or for expansion/diversification of their existing manufacturing activities.

(ii) Reserve Bank, vide its Notification No.F.E.R.A.187/98-RB dated 3rd October 1998 read with Notification No.F.E.R.A. 190/98-RB dated 2nd December 1998, has granted general permission under Section 19(1)(a), 19(1)(d) and 29(1)(b) of FERA 1973 to Indian companies for issue and export of equity shares/convertible debentures to NRI/OCB investors in respect of eligible investments. Indian companies seeking investment from NRIs/OCBs under the scheme and such unlisted Indian companies satisfying the conditions laid down in the said Notifications may issue shares/convertible debentures to NRIs/OCBs without prior approval of Reserve Bank and file a

declaration in Form ISD(R) together with the required documents with the concerned Regional Office of Reserve Bank, under whose jurisdiction their Registered Office is situated, within 30 days from the date of issue of shares/convertible debentures. Accordingly, NRIs/OCBs who have been issued shares/convertible debentures under the general permission granted by this Notification would not need any specific approval under Section 29(1)(b) of FERA 1973 from Reserve Bank.

(iii) The Indian company should report within 30 days from the date of receipt of remittance from NRIs/OCBs, full details of remittance like name, amount, date of receipt to the Regional Office of Reserve Bank under whose jurisdiction it is situated.

Investment in New issues of Indian Companies under 24% Scheme

10C.11A NRIs/OCBs are permitted to subscribe to new issues of equity shares/convertible debentures of existing or new companies (both private and public limited) engaged/proposing to engage in any activity including finance, hire purchase, leasing, trading or other services etc., (except agricultural/plantation activities and real estate business) with repatriation benefits upto 24% of the new issue of the concerned Indian company. Reserve Bank, vide its Notification No.F.E.R.A.187/98-RB dated 3rd October 1998 has granted general permission under Section 19(1)(a), 19(1)(d) and 29(1)(b) of FERA 1973 to Indian companies for issue and export of equity shares/convertible debentures to NRI/OCB investors in respect of the eligible investment. Indian companies seeking investment from NRIs/OCBs under the Scheme and satisfying the conditions laid down in the said Notification may issue equity shares/convertible debentures to NRIs/OCBs without prior approval of Reserve Bank and file a declaration in [Form ISD](#) together with the required documents with the concerned Regional Office of Reserve Bank, under whose jurisdiction their Registered Office is situated, within 30 days from the date of issue of shares/convertible debentures. Accordingly, NRIs/OCBs who have been issued shares/convertible debentures under the general permission granted by this notification would not need any specific approval under Section 29(1)(b) of FERA 1973 from Reserve Bank.

Investment in Priority Industries under 100% Scheme

10C.12 (i) NRIs/OCBs are permitted to invest in priority industries (industries included in Annexure III to Ministry of Industry's Press Note No.14 (1997 series) dated 8th October 1997 and in Indian companies primarily engaged in export trading activity, with full repatriation benefits up to 100% of the new issue of shares. Reserve Bank, vide its Notification No. F.E.R.A. 180/98-RB dated 13th January 1998 (as amended up to 14th July 1998) has granted general permission under Sections 19(1) and 29 (1) (b) of FERA 1973 to Indian companies for issue and export of equity shares to NRI/OCB investors in respect of the eligible investment. Indian companies seeking investment from NRIs/OCBs under the Scheme and satisfying the conditions laid down in the said Notification may issue equity shares to NRIs/OCBs, without prior approval of Reserve Bank and file a declaration in [form ISD\(R\)](#) together with the required documents with the concerned Regional Office of Reserve Bank, under whose jurisdiction their Registered office is situated, within 30 days from the date of issue of shares. The scheme is open to new industries as well as for expansion/diversification of existing industrial undertakings. A company, existing on the date of the above Notification, which is not engaged in the Annexure

III activities will also be eligible to issue shares if it embarks upon expansion programme predominantly in the Annexure III activities, subject to the condition that the equity raised by issue of equity shares to non-resident investors is utilised for such expansion.

NOTE : In terms of Reserve Bank Notification dated 13th January 1998 referred to above, the general permission does not cover investment by -

- (a) persons who are citizens of Pakistan, Bangladesh or Sri Lanka*
- (b) companies incorporated in Pakistan or Bangladesh*
- (c) a company being -*

- (i) manufacturer of items reserved for small scale sector;*
- (ii) unit manufacturing items which require industrial licence;*
- (iii) unit manufacturing any item of aerospace and defence equipments whether specifically mentioned or not;*
- (iv) unit manufacturing any item related to production or use of atomic energy including carrying out of any process, preparatory or ancillary to such production or use, under the Atomic Energy Act, 1962; and*
- (v) 100 % Export Oriented Unit and unit in Export Processing Zone.*

(ii) Since the general permission referred to in sub-paragraph (i) above does not cover investment by individual NRIs in partnership firms, applications for necessary permission for seeking such investment should be made to Reserve Bank, Central Office, Mumbai in [form ISD\(R\)](#) by the non-resident investor or the Indian firm proposing to invite the investment.

(iii) Applications for foreign investment which do not satisfy the parameters prescribed for general permission as laid down in the Reserve Bank Notification dated 13th January 1998 as amended upto 14th July 1998 referred to above or in 100% Export Oriented Units are required to be made to the Secretariat for Industrial Assistance (SIA)/Foreign Investment Promotion Board (FIPB), as the case may be. If the unit is located in any of the Export Processing Zones, applications should be made to the Development Commissioner of the Export Processing Zone concerned.

(iv) With a view to simplifying the procedure in respect of proposals approved by SIA/FIPB, Reserve Bank, vide its Notification No.F.E.R.A.182/98-RB dated 10th February 1998 has granted general permission under Sections 19(1) and 29(1)(b) of FERA 1973 to Indian companies for issue and export of shares/securities to foreign investors in respect of investments approved by SIA/FIPB. As a result of the general permission, Indian companies seeking foreign investments from NRIs/OCBs under the scheme based on the approvals granted by SIA/FIPB and satisfying the conditions laid down in the notification will not require any prior clearance of Reserve Bank. Such Indian companies may issue shares/securities to foreign investors and file a declaration in [form ISD](#) together with the required documents, with the concerned Regional Office of Reserve Bank under whose jurisdiction their Registered Office is situated, within 30 days from the date of issue of shares/securities to foreign investors.

Investment in Housing and Real Estate Development

10C.13 NRIs/OCBs will be permitted to invest up to 100% in the new issue of equity shares/convertible debentures of Indian companies engaged in the following areas:

- (i) Development of serviced plots and construction of built up residential premises;
- (ii) Real estate covering construction of residential and commercial premises including business centres and offices;
- (iii) Development of township;
- (iv) City and region level urban infrastructure facilities including roads and bridges;
- (v) Manufacturing of building materials;
- (vi) Financing of housing development.

Repatriation of original investment in this case will be permitted by Reserve Bank only after a lock in period of three years from the date of issue of the equity shares/convertible debentures. Applications for the purpose should be made to Reserve Bank (Central Office) in [form ISD\(R\)](#).

NOTE: OCBs will be permitted to repatriate net profit (up to 16 per cent) arising from sale of such investment after the lock-in-period of three years.

Investment in Air Taxi Operations

10C.14 NRIs/OCBs will be allowed to set up Indian companies with 100% equity participation for carrying on Air Taxi Operations in terms of the guidelines issued by the Director General of

Civil Aviation for Air Taxi Operations. Applications for the purpose should be made to Reserve Bank (Central Office) in [form ISD\(R\)](#). Repatriation of the investment and/or remittance of dividend will be permitted only after the expiry of five years of operation of the Air Taxi Scheme and only out of accumulated net foreign exchange earnings.

Investment in non-convertible Debentures of Indian Companies

10C.15 Reserve Bank of India vide its Notification No.F.E.R.A.213/99-RB dated 1st November 1999, has granted general permission to Indian companies to issue, by way of public issue, non-convertible debentures (NCDs) to NRIs/PIOs/OCBs on repatriation basis subject to the following conditions:

- i) The amount of subscription should be received by inward remittance from abroad through normal banking channels or by debit to the non-resident's NRE/FCNR account, as the case

may be, with an authorised dealer in India. Further, the percentage of such NCDs issued to NRIs/OCBs to the total paid-up value of each series of NCDs issued should not exceed the ceiling applicable for issue of equity shares/convertible debentures as prescribed by the Reserve Bank from time to time, under the respective schemes viz. 24%/ 51%/100% etc. for investment by NRIs/OCBs **on repatriation basis** in the capital of the issuer company.

ii) The rate of interest on such NCDs shall not exceed prime lending rate of State Bank of India, plus 300 basis points.

iii) The minimum period for redemption of such NCDs should be three years.

iv) The company raising funds through NCDs should not be engaged in agricultural/plantation activity, real estate business, trading in transferable development rights (TDRs) or act as Nidhi/Chit Fund company.

v) The issuer company files with the Regional Office of Reserve Bank, not later than thirty days from the date of receipt of remittance, a report containing the following:-

(a) A list containing names of NRIs/OCBs.

(b) Country of residence or incorporation of the non-resident investor;

(c) Amount and date of receipt of remittance and its rupee equivalent;

(d) Name and address of the authorised dealer in India through whom the remittance is received.

vi) The issuer company files with Regional Office of Reserve Bank, not later than thirty days from the date of issue of NCDs, the following:-

(a) A list containing names of NRIs/OCBs and the number and face value of NCDs issued to each of them on repatriation basis.

(b) Certified true copy of resolution passed in the meeting of the Board of Directors of the company, indicating the quantum and value of NCDs issued to NRIs/OCBs and residents and other details of the issue such as coupon rate, date of redemption, etc.

(c) Original Foreign Inward Remittance Certificate (FIRC)/Bank Certificate evidencing receipt of funds, from abroad or from the NRE/FCNR accounts as the case may be, of the NRI/PIO/OCB.

(d) Memorandum and Articles of Association of the issuer company.

(e) Certificate in Form OAC/OAC1 indicating the NRI shareholding to the extent of atleast 60% either directly or indirectly in case of investment by OCB.

(f) Any information sought by the Reserve Bank with reference to the issue of NCDs within such time as may be stipulated.

(g) An undertaking that the issuer company is not and shall not be engaged in agricultural/plantation activity, real estate business, trading in TDRs or act as Nidhi/Chit Fund company.

Investment in Sick Industrial Units

10C.16 (i) NRIs/OCBs will be permitted by Reserve Bank to undertake revival of sick industrial units by making bulk investment in them either by way of purchase of

equity shares from existing shareholders or in the form of subscription to new equity issues of the sick units on the following basis :

- (a) The bulk investment can be made on private placement basis up to 100% of the equity capital of the sick company with full benefits of repatriation of capital invested and income earned thereon.
- (b) Issue/transfer of equity shares should be approved by the existing shareholders of the company through a Special Resolution.

For the purpose of investment under the scheme, a company should be declared as sick or there should be a rehabilitation programme approved by the public financial institution/commercial bank or a consortium of banks or by the Board for Industrial and Financial Reconstruction (BIFR).

- (ii) Applications for permission for issue/transfer of equity shares to non-residents

should be made by the concerned Indian company in [form RSU](#) to the Central Office of Reserve Bank together with the particulars/documents specified in the application form.

Investment in the Schemes of Domestic Mutual Funds

10C.16A (i) Reserve Bank, by its Notification Nos. F.E.R.A.195/99-RB dated 30th March 1999 and No. F.E.R.A. 212/99-RB dated 18th October 1999, has granted general permission under Section 19(1)(d) and 19(1)(a) read with Section 9(1)(a) of the Foreign Exchange Regulation Act, 1973 to domestic mutual funds referred to in clause (23D) of Section 10 of the Income Tax Act, 1961:-

- a. to issue units or any other similar instrument, on repatriation basis, to NRIs/OCBs/PIOs/FIIs under the schemes floated by them with the approval of the Securities and Exchange Board of India, subject to the conditions mentioned under (ii), below.
- b. to send such units/instruments out of India to the place of residence or location, as the case may be, of the non-resident investor, or to their global custodians in the case of FIIs.
- c. to repurchase units or similar instruments issued to NRIs/OCBs/PIOs/FIIs and to make payment therefor to them;

(ii) the general permission to issue units referred to in (i)(a) is subject to the following conditions:-

- a. The mutual fund should comply with the terms and conditions stipulated by the Securities and Exchange Board of India.
- b. The amount representing investment should be received by inward remittance through normal banking channels or by debit to the NRE/ FCNR account of the non-resident investor or Special Non-Resident Rupee account of the FII maintained with an authorised dealer/ designated bank in India.

(iii) The net amount representing the dividend/interest and maturity proceeds may be remitted through normal banking channel or credited to NRE/FCNR/NRO/NRSR account of the non-resident investor or Special Non-Resident Rupee Account of the FII.

(iv) Authorised dealers may allow the credit of net amount of dividend/interest or the maturity proceeds/ repurchase value to the NRE/FCNR account of the non-resident investor or Special Non-resident Rupee account of the FII or allow remittance thereof only on production of a certificate from the mutual fund that the investment was made out of inward remittance from abroad or from the funds held in NRE/FCNR account of the non-resident investor maintained with an authorised dealer or Special Non-Resident Rupee Account of the FII with a designated bank in India and subject to compliance with the provisions of paragraph 3B.10.

Investment in Bonds issued by Public Sector Undertakings (PSUs)

10C.16B NRIs/OCBs will be permitted to invest in the Bonds issued by Public Sector Undertakings (PSUs) in India with repatriation benefits. The concerned PSU should obtain the

necessary approval from Government of India for raising funds through issue of bonds and adhere to the guidelines issued by Government of India, Ministry of Finance, in this regard. Applications for necessary permission should be made by the concerned PSU to Reserve Bank (Central Office) in [form ISD\(R\)](#) along with a certified copy of the approval of Government of India for issue of bonds.

General Permission to NRIs/OCBs to purchase

shares of Public Sector Enterprises (PSEs)

10C.16C Reserve Bank by its [Notification No.FERA.159/94-RB](#) dated 5th October 1994 has granted general permission under Sections 29(1) and 19(4) of FERA 1973 to NRIs/

OCBs to purchase the shares on repatriation basis disinvested by Government of India in certain Public Sector Enterprises (PSEs) and to PSEs to register in their books the overseas address of such NRIs/OCBs, subject to the conditions that (a) the holding of shares by a NRI or by an OCB, at any time, does not exceed one per cent of the paid up capital of the PSE concerned, (b) the purchase consideration/bid money is received by way of remittance from abroad through normal banking channels or by transfer of funds held in investor's NRE/FCNR accounts, and (c) the application is submitted alongwith deposit of bid money/purchase consideration at the branch of State Bank of India designated by the Government of India for that purpose in the notice inviting the bids.

Opening of Foreign Currency Collection Accounts

10C.17 (i) In order to facilitate collection of subscriptions from NRIs/OCBs at foreign centres, Reserve Bank may allow Indian companies inviting NRI investments

to open temporary foreign currency bank accounts at various foreign centres. After final allotment of shares/debentures to non-resident subscribers to the new issues, refund of excess subscriptions is allowed to be made out of funds lying in the overseas accounts. The temporary bank accounts have to be closed thereafter and the balance repatriated to India.

(ii) Applications for opening temporary foreign currency accounts for the above

purpose may be made by letter giving names and addresses of overseas bank branches with whom accounts are to be opened, full details of NRI issue, and number and date of Reserve Bank's approval for issue of shares/debentures to NRIs/OCBs, to the concerned office of Reserve Bank if the NRI investment is on non-repatriation basis or where the investment is to be made in 100% Export Oriented Unit and to Central Office of Reserve Bank in other cases.

Refund of Subscription

10C.18 Where NRIs/OCBs intend to subscribe to new issues of Indian companies, authorised dealers may allow payment of subscription (application money) from the applicants'

NRE/FCNR accounts or NRO accounts, as the case may be. If the subscription or any portion thereof (inclusive of interest on delayed refunds of share application money) is to be refunded by the company, authorised dealers may recredit the amount to the same account of the applicant from which it was drawn earlier. In cases where subscription to new issues of shares/securities were made by remittance from abroad or by debit to the investor's NRE/FCNR account, he will have the option of having the excess subscription refunded to him either by remittance of the amount abroad or by credit to his NRE/FCNR account. Remittance of funds abroad or credit thereof to the applicant's NRE/FCNR account may be allowed only if the relative refund order is accompanied by a certificate from the collecting bankers or the investee company's bankers indicating that the original subscription was received by way of remittance from abroad or by debit to the applicants' NRE/FCNR account. Authorised dealers may also ensure that the payment of interest in respect of delayed refund of share subscription is in accordance with the provisions indicated in the prospectus of the company in its public issue as vetted by Securities and Exchange Board of India (SEBI).

Deposits with Companies

10C.19 NRIs and OCBs will be permitted to place funds in fixed deposits with public limited companies in India (including Government undertakings with limited liability) with

full repatriation benefits for a period of three years. The total amount of fixed deposits permitted to be accepted will be stipulated by Reserve Bank in individual cases. The application for permission to accept deposits from non-residents with repatriation rights may be made by the Indian company through its bankers to the concerned office of Reserve Bank under whose jurisdiction its Head/Registered Office is situate, giving details of the deposit scheme. It is not necessary for non-resident depositors to seek separate permission from Reserve Bank in this regard. Reserve Bank will grant permission to the bank branch nominated by the company for accepting deposits. While granting permission, Reserve Bank will authorize the branch to allow

remittance of interest and maturity proceeds of deposits or credit thereof to the depositor's NRE/FCNR account.

III. Portfolio Investment in Shares/Debentures of Indian Companies and in Domestic Mutual Funds

Regulations regarding Portfolio Investment (i.e. investment through Stock Exchange) in shares/debentures by NRIs/OCBs have been explained in paragraphs 10C.20 to 10C.23.

Registration of Designated Branches

10C.20 Portfolio investments in shares/debentures by NRIs/OCBs are permitted only through designated branches of authorised dealers preferably located at centres having stock

exchanges. Authorised dealers should inform the names of such branches to Central Office of Reserve Bank and obtain approval. The Code number allotted by Reserve Bank should be quoted in all correspondence undertaken with Reserve Bank in this regard. Non-resident investors can also authorise Indian residents or stock exchange brokers as their agents in India to purchase/sell shares on their behalf under the schemes but all transactions should be routed through the designated branch of authorised dealer.

General Conditions for Purchase with Repatriation or Non-Repatriation rights

10C.21 (i) NRIs/OCBs will be permitted to make portfolio investment in shares/debentures (convertible and non-convertible) of Indian companies, with or without repatriation benefits provided the purchase is made through a stock exchange and also through designated branch of an authorised dealer. NRIs/OCBs are required to designate only one branch authorised by Reserve Bank for this purpose.

(ii) Investment in equity shares and convertible debentures will be permitted subject to an overall ceiling of (a) 10 per cent of the total paid-up equity capital of the company concerned; and (b) 10 per cent of the total paid-up value of each series of the convertible debentures issued by the company concerned for all NRIs/OCBs taken together both on repatriation and on non-repatriation basis. [See [paragraph 10C.23\(ii\)](#) in respect of investments in excess of the limit of 10%].

(iii) The purchase of shares and debentures under the scheme is required to be made at the ruling market price.

10C.21(iv) NRIs/OCBs intending to invest on non-repatriation basis should submit their applications in [Form NRI](#) and [NRC](#) respectively, through a designated branch of an authorised dealer, to Reserve Bank (Central Office). Reserve Bank will grant general permission to the concerned authorised dealer to purchase shares/debentures of Indian companies, securities (other than bearer securities) of the Central or any State Government and Treasury Bills on behalf of

the NRI/OCB subject to the condition that the payment for such investment is received through inward remittance or from the investor's NRE/FCNR/NRO/NRSR account. The general permission granted by Reserve Bank would be initially valid for a period of five years. Authorised dealers may themselves renew the permission granted by Reserve Bank to individual NRIs as well as OCBs for a period of five years at a time.

(v) NRIs and OCBs intending to invest with repatriation benefits should submit their applications through a designated branch of an authorised dealer in [Form RPI](#) and [RPC](#) respectively. Reserve Bank will grant general permission to the designated branch for purchase of shares/debentures of Indian companies, securities (other than bearer securities) of the Central or any State Government and Treasury Bills subject to the conditions that -

- a. the payment is received through an inward remittance in foreign exchange or by debit to the investor's NRE/FCNR account.
- b. investment made by any single NRI/OCB investor in equity/preference shares and convertible debentures of any listed Indian company does not exceed 5% of its total paid-up equity or preference capital or 5% of the total paid-up value of each series of convertible debentures issued by it.
- c. NRIs/OCBs take delivery of the shares/convertible debentures purchased and give delivery of the shares/convertible debentures sold under the Scheme.

The general permission granted by Reserve Bank will be valid initially for a period of five years. Authorised dealers may themselves renew the permission granted by Reserve Bank to individual NRIs as well as OCBs for a further period of five years at a time. Authorised dealers may note to obtain the latest OAC/OAC 1 certificate from the OCB concerned before renewing the permission.

(vi) NRIs/OCBs intending to invest in the units of domestic mutual funds on non-repatriation/repatriation basis under the Portfolio Investment Scheme should apply to Reserve Bank (Central Office) in the manner indicated in sub-paragraphs (iv) and (v) above. However, approvals already granted for portfolio investment in shares/debentures of Indian companies will also be valid for purchase of units of domestic mutual funds.

Registration of Shares & Investment in Joint Names

10C.22 (i) Shares/debentures purchased by NRIs/OCBs should be held and registered in the names of either the investor himself or an authorised dealer or the latter's nominee/s.

(ii) Shares/debentures can be purchased by NRIs in joint names with other NRIs with permission of Reserve Bank. In such cases, if the investment is with repatriation benefits, the first holder is to be treated as investor for the purpose of 5% ceiling. The second or third holder will be eligible to invest separately in the same company in his own name as the first holder in joint holdings up to the limit of 5%. Reserve Bank will also permit investment jointly with residents. However, if the resident joint holder inherits the shares/debentures, he/she will not be entitled to repatriation benefits.

Procedure for Monitoring the Overall Ceilings

10C.23 (i) Reserve Bank (Central Office) will monitor the overall ceiling of 10% on the acquisition of shares/debentures by NRIs/OCBs under the Portfolio Investment Scheme with the assistance of link offices of authorised dealers in Mumbai. The link offices should submit a statement in [form LEC \(NRI\)](#) giving details of purchases/sales of shares/debentures (company-wise) made by all designated branches **on daily basis**. The daily statement should be serially numbered. All purchase and sale transactions for which commitments have been made (as evidenced by contract notes issued by recognised stock exchange brokers) irrespective of whether the actual deliveries have been effected or not should be included in the daily statement. Sales where shares/debentures were originally purchased by the NRI/OCB investors through stock exchange should only be included in the statement. If no transactions are effected on any day, a 'nil' statement need not be submitted.

(ii) Indian companies listed on recognised stock exchanges in India may, however, resolve by a General Body Resolution to allow NRIs/OCBs to acquire shares/debentures up to 24% instead of the 10% mentioned in [paragraph 10C.21\(ii\)](#). Indian companies desirous of exceeding the limit of 10% should, therefore, forward the necessary resolution to Reserve Bank indicating that the General Body has no objection to NRIs/OCBs purchasing shares/debentures up to 24% of the paid up capital/paid up value of each series of convertible debentures. On receipt of the resolution, the name of the company will be intimated to all link offices of designated branches of authorised dealers to enable them to make purchases on behalf of their clients up to the raised/revised limit in respect of the company.

IV. Remittance of Dividend/Interest and other Income and Sale/Transfer of Shares/Debentures

Remittance of Dividend/Interest on Shares/

Bonds/Debentures held by NRIs/OCBs

10C.24 (i) The procedure outlined in paragraph [10B.6](#) and [10B.7](#) should be followed for remittance of dividend (including interim dividend) or interest on

shares/bonds/debentures to non-resident holders who have been permitted to make investments with repatriation benefits. In cases where the dividend/interest is to be credited to the non-resident holder's NRE account with a bank in India, it may be paid by issuing individual dividend/interest warrants to the shareholders' mandatee banks for credit to NRE account. The following particulars/documents should be furnished by Indian companies along with the dividend/interest warrant:

- (a) Nationality and origin of the non-resident share/bond/debenture holder and place/country of permanent residence;
- (b) A certified statement from the company, under the signature of an authorised official, showing the number of shares/bonds/debentures held by

the non-resident, face value, number and date of Reserve Bank's approval under Section 19(1)/29(1)(b)/29(4)(a) of the Act for issue / purchase / holding of the shares/bonds/debentures, rate of dividend declared or interest payable, year/period to which it relates, gross dividend/interest, tax deducted at source and net remittable amount;

- (c) A certified statement from the company, under the signature of an authorised official, that in the terms of permission granted by Reserve Bank for acquisition of the shares/bonds/debentures there is no prohibition for the remittance of dividend/ interest.

On receipt of the above particulars/documents and after verifying documentary evidence that the permission granted by Reserve Bank to the non-resident share/bond/debenture holder for purchase/ holding/issue of shares/bonds/debentures under Section 29(1)(b)/ 29(4)(a)/19(1) of FERA 1973 does not prohibit the remittance of dividend/interest, authorised dealers may credit the amount of the dividend/interest warrant to the NRE account of the non-resident share / bond / debenture holder.

- (ii) While granting permission to bank branches of authorised dealers to purchase

shares/debentures on behalf of NRIs, under the Portfolio Investment Scheme, Reserve Bank also authorises the bank branch concerned to remit or to credit the dividend/interest to the non-resident investor's NRO/NRE/FCNR account, as the case may be. Dividend/interest due to the non-residents may accordingly be credited to the respective accounts after ensuring that the conditions laid down in this regard are satisfied.

- (iii) Dividend/Interest due to non-resident share /bond/debenture holders who are

not eligible for having them remitted abroad should be paid to their mandatee bankers in India for credit to their NRO accounts. Reserve Bank would permit repatriation of the net (i.e. after payment of tax) income/interest earned during the financial year 1994-95 and onwards on such investments in accordance with the procedure laid down in paragraph [10C.24A](#).

- (iv) Before allowing remittance of dividend/interest to an OCB, authorised dealers

should ensure that it has submitted the required annual certificate in [form OAC](#) or [OAC 1](#), as the case may be, and that the ownership/beneficial interest of non-resident individuals of Indian nationality/origin had remained at or above the level of 60% up to the end of the period for which dividend is to be remitted.

Remittance of Income on Investments on

non-repatriation basis

10C.24A (i) Non-resident persons of Indian nationality/origin (NRIs) and overseas

corporate bodies (OCBs) predominantly owned by NRIs have been permitted to make investment in partnership / proprietorship concerns, shares/debentures of Indian companies, Indian mutual funds, real estate, deposits with Indian companies/banks, units of Unit Trust of India, etc. on non-repatriation basis. NRIs are also permitted by Reserve Bank to grant loans to resident persons/firms/companies on non-repatriation basis. Further, the investment/deposits held in India by Indian nationals who have become non-residents on account of their going abroad on employment/emigration, as well as income/interest earned on such investment/deposit/loan is also not allowed to be repatriated abroad. [cf. paragraphs [10C.6 to 10C.10](#), [10C.30](#), [10C.31](#), [10C.34](#), [10D.8](#), [11E.6\(item A.5\)](#), [11E.7](#) and [13A.9](#)]. Although the investment/principal amount of deposits/loans made/held on non-repatriation basis under these schemes, investment made by NRIs out of rupee loans from banks in India against the security of NRE/FCNR accounts, sale proceeds of the house/flat acquired/constructed out of loans obtained by NRIs against the security of the NRE/FCNR accounts, if sold, continue to be non-repatriable, authorised dealers may allow repatriation of net income/interest earned (i.e. after payment of tax) on these investments/deposits/loans, as also of net income by way of rent earned on house/flat acquired/constructed, in a phased manner as under :

Incomes earned during the financial year Amount eligible for repatriation

1994-95	up to U.S.\$ 1,000 (U.S.dollars one thousand) in full and one third of the balance amount of income
1995-96	up to U.S.\$ 1,000 (U.S. dollars one thousand) in full and two third of the balance amount of income
1996-97onwards	Entire income

Applications for remittance of such incomes may be made to Reserve Bank on a consolidated basis at the end of the year in accordance with the procedure laid down in paragraph (ii). Since the entire income will be repatriable from 1996-97 onwards, remittances pertaining to the period 1996-97 and onwards will be permitted to be made either in one lumpsum or in suitable instalments, if so desired by the applicants.

(ii) For the purpose of availing of this facility, the concerned NRI/OCB should

designate a branch of an authorised dealer through whom the remittance of income is sought to be made and submit an application to it in [form RCI](#), duly completed, together with the documents specified therein and details of income earned on investments/deposits as also any other income like pension earned. Authorised dealer on satisfying himself with reference to the particulars/documents and the Chartered Accountants certificate furnished that the income/interest etc. sought to be repatriated is eligible for remittance, may allow the remittance out of the relevant funds held in the applicant's NRO account or credit the same to the NRE/FCNR account of the applicant after ensuring that the Income-tax has been paid as per the provisions of Income-tax Act and an undertaking/certificate regarding payment of income-tax (cf. [paragraph 3 B.10](#)) has been produced from the Income-tax Authorities. Doubtful cases

should be referred to Reserve Bank with full particulars

NOTE : *Remittance of pension may be allowed if the applicant does not have any other income in India, without insisting on a certificate from Chartered Accountant/Income tax authorities regarding payment of Income-tax. In such cases authorised dealers should obtain a "one time certificate" issued by the pension disbursing office that the applicable Income-tax is being deducted by them.*

(iii) The designated branch should maintain party-wise records of the approvals

granted by Reserve Bank as also actual remittances made there against. A half-yearly statement in [form CIR](#) should be sent to Reserve Bank giving details of the remittances made/credits to NRE/FCNR accounts allowed, by 15th of the month following the half-year.

Sale/Transfer of Shares/Bonds/Debentures

by NRIs to Residents

10C.25 (i) In order to facilitate quick transfer of shares/bonds/debentures held by NRIs to residents, Reserve Bank has granted general exemptions by Notifications issued under

Section 19(6) of FERA1973 for sale/transfer of shares/bonds/ debentures through stock exchanges in India subject to fulfillment of certain conditions. The details of these exemptions have been explained in paragraphs [10C.26](#) and [10C.27](#).

(ii) Applications for sale/transfer of shares / bonds /debentures held by

NRIs/OCBs by private arrangement i.e. other than through stock exchange should be made to Reserve Bank in [form TS 1](#) either by the transferor or the transferee, attaching therewith the letter of consent of the other party irrespective of whether the shares/bonds/ debentures are listed on a stock exchange or not. While conveying its approval, Reserve Bank will stipulate the conditions subject to which the sale/transfer should be effected. In cases of sale/transfer of shares/bonds/debentures acquired on repatriation basis, repatriation of such proceeds of bulk holdings (i.e. shares/bonds/debentures exceeding Rupees one lakh in face value or 5% of the company's paid-up capital whichever is lower) will be permitted only on production of a certificate from a Chartered Accountant or the concerned company's secretary stating that shares with necessary transfer forms duly signed have been received/lodged with the company for registration in favour of the transferee.

General Exemption for Sale/Transfer of Shares/Bonds/

Debentures of Indian Companies through a Stock Exchange

acquired without repatriation benefit

10C.26 (i) Reserve Bank by its [Notification No. FERA.149/93-RB](#) dated 26th April 1993

has exempted the transfer of shares, bonds or debentures of Indian companies made by

NRIs through stock exchange in India in case where (a) such transfers are made in favour of an Indian citizen or person of Indian origin resident in India or in favour of a company or other body corporate incorporated in India and (b) sale proceeds of shares are credited to the NRO account of the transferor with no right of repatriation outside India. In such cases, authorised dealers may credit the sale proceeds to the seller's NRO account after verifying the contract notes issued by recognised stock exchange brokers through whom the sale was effected. This exemption is available in respect of shares, bonds or debentures acquired by NRIs under the Portfolio Investment Scheme as well as under any Direct Investment Scheme.

(ii) For sale/transfer of shares, bonds or debentures by OCBs acquired on non-

repatriation basis through a stock exchange in India, a consolidated application giving full particulars may be submitted to the concerned office of Reserve Bank. Permission will be granted by Reserve Bank for a specific period subject to renewal.

**General Exemption for Sale/Transfer of Shares/Bonds/Debentures
of Indian Companies through a Stock Exchange acquired with
repatriation benefits under the Portfolio Investment Scheme**

10C.27 (i) Reserve Bank by its [Notification No.FERA.150/93-RB](#) dated 26th April 1993

has exempted transfer of shares, bonds or debentures of Indian companies registered

in India previously **acquired by NRIs/OCBs with repatriation benefits under the Portfolio Investment Scheme** to persons resident in India or persons of Indian origin resident in India or in favour of companies or bodies corporate, incorporated under any law in force in India on the following conditions.

- (a) The transferor had purchased such shares, bonds or debentures from the stock market through a member of a recognised stock exchange in India and delivery of shares, bonds or debentures so purchased has been taken by him or on his behalf by the concerned authorised dealer or its nominee.
- (b) The shares, bonds or debentures are sold in the stock market through a member of a recognised stock exchange in India and the sale transaction is effected at the ruling market price as determined on the floor of the stock exchange by normal bid and offer method and through the same designated branch of the authorised dealer through which the shares, bonds or

debentures were earlier purchased;

and

- (c) The sale proceeds are paid to the said designated branch.

Consequently, it is not necessary for NRIs/OCBs to obtain Reserve Bank's permission for sale of shares/bonds/debentures effected in the above manner. As regards the repatriation of sale proceeds received by the designated branches, Reserve Bank will, while granting approval for purchase of shares/bonds/debentures also grant approval for repatriation of the sale proceeds if and when shares/bonds/debentures are sold in the above manner. The actual repatriation of the sale proceeds or credit thereof to the NRE/FCNR account of the beneficiary will be subject to payment of Indian taxes.

- (ii) Sale/transfer of shares/bonds/debentures acquired by NRIs/OCBs with

repatriation benefits under the Direct Investment Scheme and sold through the Stock Exchange in India will require permission of Reserve Bank. Applications for necessary permission should be made by NRIs/OCBs to the Central Office of Reserve Bank in [form TS 4](#) through the designated bank branch of an authorised dealer.

In such cases, permission for sale/transfer of shares / bonds/ debentures acquired with the right of repatriation will be granted by Reserve Bank to the bank branch designated by the seller or to the authorised dealer, as the case may be, who may sell the holdings at the ruling market price through a stock exchange at any time within the validity of the permission. While granting permission for sale/transfer, Reserve Bank will also authorise the designated branch/authorised dealer to credit the sale proceeds to the NRE or FCNR account of the seller or to remit them abroad subject to payment of taxes on capital gains, if any. Where the amount of capital gains tax is not immediately determinable, the designated branch/authorised dealer may allow repatriation of sale proceeds or credit thereof to the seller's NRE/FCNR account to the extent of the original cost of investment immediately on realisation of the sale proceeds. The excess amount, if any, representing capital gain should be kept by the designated branch/authorised dealer in a separate NRO account of the seller or in a suspense account. The designated branch/authorised dealer may allow withdrawal of this amount for credit to the NRE/FCNR account of the seller or remit it abroad, on production of necessary tax clearance certificate.

NOTE: *Under Section 204 of the Income-tax Act 1961, authorised dealers are required to deduct income-tax at a flat rate of 20% of the long-term capital gains accruing to NRIs on the transfer of specified assets which include shares/bonds/debentures of Indian companies, Government securities and any other notified assets. The amount of capital gains is to be arrived at on the basis of a formula laid down by Government. The tax deducted at source is required to be paid into Government treasury or the office of Reserve Bank, State Bank or any other nationalised bank authorised for the purpose, within one week from the date of deduction of tax. NRIs have, however, been given the option to pay*

*tax at the above flat rate or pay it on the total income for the assessment year, in which case the remaining amount of sale proceeds withheld by authorised dealers may be credited to **NRE/FCNR** account of the seller or remitted to him abroad only after production of the necessary tax clearance certificate.*

(iii) A quarterly statement of sales / transfers of shares / bonds / debentures

acquired by NRIs/OCBs under the Direct Investment Scheme and sold through stock exchange by authorised dealers vide sub-paragraph (ii) above should be submitted by the concerned authorised dealer to the Central Office of Reserve Bank in [form DSP](#) within 15 days from the close of each calendar quarter.

General Exemption for Transfer of Rupee

Securities by Non-residents as Gift

10C.28 By its [Notification No. FERA.151/93-RB](#) dated 26th April 1993, Reserve Bank has also exempted transfer, by way of gift, of any share, bond or debenture of a company registered in India made by a non-resident Indian or person of Indian origin to a citizen of India or a person of Indian origin resident in India provided -

- (a) such share, bond or debenture was held by the transferor with the permission of the Reserve Bank,
- and
- (b) such transfer is between relatives as defined in Section 6 of the Companies Act, 1956.

Transfer of Rupee Securities to Non-residents as Gifts

10C.29 Transfer of rupee shares/securities by residents to non-residents by way of gift requires prior approval of Reserve Bank. Applications for such transfers should be made to the concerned Office of Reserve Bank and should, inter alia, contain the following information:

- (a) Name, address and permanent place of residence of both the transferor and the transferee.
- (b) Relationship between the transferor and the transferee.

- (c) Reason for making the gift.

Recording of Overseas Address by Indian Companies

Consequent on Resident Security Holder Becoming Non-resident

10C.30 In terms of Section 19(4) of FERA 1973, permission of Reserve Bank is required to be

obtained by Indian companies for recording in their registers/books, the overseas

address of the holder of securities, consequent on change of his status from resident to non-resident. By its [Notification No. FERA 122/92-RB](#) dated 17th September 1992, Reserve Bank has granted general permission to companies in India to enter the overseas address in such cases provided the company obtains an undertaking from the holder of any security that he will not seek repatriation of any income, dividend or sale proceeds of the security. The dividend/interest earned on such securities or sale proceeds thereof should, therefore, be credited only to the Ordinary Non-resident Rupee (NRO) Account of the holder with a bank in India.

Note: See [paragraph 10C.24A](#) regarding repatriation of income/interest earned during the financial year 1994-95 and onwards.

Conversion of Holdings of Securities into

Joint Holdings Between Residents/Non-residents

10C.31 By its [Notification No. FERA.145/93-RB](#) dated 26th April 1993 issued under sub-

sections (1) and (5) of Section 19 of FERA 1973, Reserve Bank has granted general

permission to NRIs/resident Indian citizens for conversion of their holdings in securities issued or registered in India, into joint holdings by addition of the names of persons of Indian nationality or origin subject to the following conditions:

- a) An NRI to convert his holding into joint holding by addition of name/s of person/s of Indian nationality/origin resident in India provided (i) transfer formalities as required under the Companies Act, 1956 are complied with and (ii) dividend income or sale proceeds of the securities accruing to the person resident in India are not repatriated outside India in the event of his becoming a non-resident sole (or joint named) holder of the security by succession, gift or otherwise.
- b) A resident Indian citizen to convert his holding into a joint holding by addition of name/s of an NRI/s provided (i) the resident holder continues to be the first holder; (ii) the joint holding is treated as non-resident holding in the books of the company; (iii) any dividend or income or sale proceeds becoming payable to

NRIs are credited to his NRO account and (iv) the securities are not sold or disposed of otherwise than through a member of a recognised stock exchange in India, except with the permission of Reserve Bank.

Note: See [paragraph 10C.24A](#) regarding repatriation of income/interest earned during the financial year 1994-95 and onwards.

V. Investment in Government Securities/Units, etc.

Investment in Government Securities, National Plan/

Savings Certificates and Units of UTI

10C.32 (i) NRIs are permitted to invest freely in securities (other than bearer securities) of the Central or any State Government and National Plan/Savings Certificates

by making remittances from abroad or out of funds held in their NRE/FCNR accounts, provided the purchase/subscription is arranged through the authorised dealer maintaining the account. Authorised dealers may also make such investments on behalf of NRIs out of funds held in their NRO accounts subject to the condition that the funds invested and any income earned thereon will not be eligible for repatriation out of India at any time in future. Likewise, OCBs can also invest in Government securities and National Plan/Savings Certificates if permitted under the terms and conditions applicable to the sale/issue of such securities and the purchase/subscription is arranged through an authorised dealer.

(ii) NRIs/OCBs are permitted to invest in units of UTI subject to the terms and

conditions applicable for the issue/sale thereof, against remittances from abroad or out of funds held in their NRE/FCNR account, through the authorised dealer maintaining the account. Funds held in their NRO accounts may also be utilised for the purpose subject to the condition that the funds invested and any income earned on such investment will not be eligible for repatriation out of India at any time in future. UTI has also been granted general permission by Reserve Bank for issue of units to NRIs/OCBs, provided the funds towards the purchase price are remitted by the investors from abroad in an approved manner or the price is paid out of the investors' NRE/FCNR accounts maintained with authorised dealers in India. Where funds held in NRO accounts are utilised for purchase of units, UTI will issue units to NRIs/OCBs on the condition that the funds invested and income earned thereon will not qualify for repatriation out of India at any time in future. Units can thus be bought by NRIs/OCBs directly from UTI also.

Sale/Transfer of Government Securities/Units

10C.33 NRIs/OCBs may freely sell/transfer Government securities through a Stock Exchange in India, provided the sale/transfer of such securities is arranged through an authorised

dealer. Similarly NRIs/OCBs holding units of UTI may freely tender them for repurchase by the Trust.

Repatriation of Interest/Dividend/Maturity

Proceeds of Government Securities/National

Plan and Savings Certificates/Units

10C.34 Interest and maturity proceeds of Government securities including National Plan/Savings Certificate, sale proceeds of Government securities sold on Stock Exchanges as well

as dividend on Units of UTI and repurchase proceeds thereof may be credited by authorised dealers to the NRO accounts of non-resident investors without reference to Reserve Bank. As far as credits of such funds to NRE/FCNR accounts are concerned, powers of authorised dealers are restricted to cases where the original investment was made by remittances from abroad or by debit to the NRE/FCNR accounts maintained by non-resident investors. In the case of Units purchased directly from UTI, authorised dealers may credit the dividends/repurchase proceeds to the investor's NRE/FCNR account or make remittance to the investor abroad only if the payment is received from UTI with a confirmation that the investment in those units was made out of funds received from abroad in an approved manner or by debit to NRE/FCNR account of the unit holder. In all other cases, dividend/repurchase proceeds should be credited to NRO accounts.

Note: See [paragraph 10C.24A](#) regarding repatriation of income/interest earned during the financial year 1994-95 and onwards.

PART D - LOANS, OVERDRAFTS AND GUARANTEES FOR NON-RESIDENTS

Loans Abroad against Securities provided in India

10D.1 (i) The pledging of securities or the giving of guarantees by banks and others in India

to banks and others outside India for the purpose of grant of loans or overdrafts abroad is,

prohibited except to the extent provided in sub-paragraphs (ii) and (iii) below.

(ii) Authorised dealers may grant through their overseas branches and correspondents,

to Indian nationals or persons of Indian origin established in business or trade, loans and overdrafts against the security of fixed deposits or other assets in India, provided they are satisfied that such assets represent funds which had been previously remitted to India in an approved manner. Overseas branches and correspondents of authorised dealers can also accept shares/debentures of Indian companies as collateral for the purpose of granting loans/overdrafts to non-resident borrowers, provided these shares/debentures were acquired on repatriation basis out of remittance from abroad or funds held in NRE/FCNR accounts. Any remittance from India

other than the sale proceeds of the shares held by the concerned NRIs on repatriation basis (net of applicable taxes, if any) to be adjusted for liquidation of outstandings in such loans or overdrafts accounts will, however, require prior approval of Reserve Bank. Grant of loans and overdrafts against security of fixed deposits with authorised dealers in NRE/FCNR accounts is governed by the provisions in Chapters [13](#) and [14](#).

(iii) Deleted.

Loans in India to Non-residents against Shares/

Securities/Properties held by them in India

10D.2 (i) Authorised dealers may grant loans and overdrafts to Non-resident persons of Indian nationality/origin against the security of shares/debentures and immovable property held by them in India, according to their commercial judgement provided:

(a) Shares/Securities are held in the name of the concerned NRI with the general or special permission of Reserve Bank. In the case of loans against security of immovable properties (other than agricultural/plantation property or farm house) to persons of Indian origin holding foreign passport, the properties have been acquired with the general or special permission of Reserve Bank.

(b) The loan is utilised for meeting the borrower's personal requirements and/or for his own business purposes and not for (i) re-lending or investment in shares/securities/immovable property, or (ii) investment in agricultural/plantation activities or farm house and in real estate business (i.e. dealing in land and other immovable property for commercial purposes either singly or in association with others).

(c) The quantum of loan, margin, interest etc., are in accordance with the guidelines issued by Department of Banking Operations and Development regarding advances against shares/securities/immovable properties.

(d) The loan amount is retained in India and not remitted abroad. The loan amount should not be credited to NRE/FCNR/NRNR account of the non-resident.

(e) The repayment of the loan is made by way of remittances from abroad through normal banking channel or by debit to the NRO/NRSR/NRE/FCNR account of the borrower or out of the sale proceeds of the shares/securities/immovable property against which such loan was granted.

Regulations governing grant of loans/overdrafts against balances held in NRO/NRE/FCNR account have been laid down in Chapters [13](#) and [14](#).

(ii) Reserve Bank has granted general permission to certain financial institutions

providing housing finance e.g. Housing Development Finance Corporation, LIC Housing Finance Ltd., etc. to grant housing loans to non-resident Indian nationals for acquisition of a house for self occupation subject to certain conditions. Full details of the documents/particulars required to be furnished by the borrowers should be ascertained from the financial institution concerned.

(iii) Authorised dealers may also grant housing loans to NRIs holding Indian passports against the security of immovable property proposed to be acquired by them subject to the following conditions:

- (a) The house/flat will be used for self occupation by the non-resident on return to India and not for any other purpose.
- (b) The quantum of loan, margin money and the purpose of loan will be at par with those applicable to housing loans being granted to residents.
- (c) The loan should be fully secured by creating equitable mortgage of the concerned property and if necessary, lien on borrower's other assets in India.
- (d) Repayment of the loan should be made by the borrower within a period not exceeding 15 years and in instalments comprising principal and interest including all charges by remittances from abroad through normal banking channels or out of funds in his/her NRE/FCNR/NRO account in India.
- (e) If the house/flat is rented out, the entire rental income, even if it is more than the prescribed instalment, should be adjusted towards repayment of the loan. If the rental income is less than the prescribed instalment, the borrower should remit the amount to the extent of the shortfall from abroad or pay the difference out of his/her NRE/FCNR/NRO account in India.
- (f) The housing loans would be subject to interest rate directives issued by Reserve Bank from time to time and will be outside the purview of the housing finance allocations prescribed for providing finance to resident Indians.

Authorised dealers should maintain separate record of such loans granted by them with full details such as name and address of the borrower, amount of margin money paid, amount of loan, period of loan, payment schedule, details of repayment received and manner of such payments, for verification by inspecting officials of Reserve Bank.

NOTE: *In the case of persons who have returned to India for permanent settlement, the repayment of the outstanding loans may be allowed in rupees.*

- (iv) Authorised dealers may also grant loans to NRIs where the NRI is a principal borrower with resident close relative(s) (as defined in Section 6 of Companies Act, 1956) as co-obligant/guarantor or where the land is owned jointly by NRI borrower with resident close relative subject to the conditions mentioned in sub-paragraph (iii) above. There would also be no objection to loans being granted to residents with NRI as a co-obligant.

- (v) Reserve Bank will also be prepared to grant general permission to companies/ banks and other institutions in India to grant housing loans to their employees deputed abroad and holding Indian passports, under their "Staff Housing Loan Schemes" upto Rs.25 lakh per employee subject to certain conditions. Application for the purpose should be made to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, (External Payments Division), Mumbai-400 001 by letter togetherwith full details of the scheme

Loans in India to NRIs against Security of

NRI Bonds issued by SBI

10D.3 Deleted.

Loans in India to Non-resident holders of

India Development Bonds issued by SBI

10D.4 Deleted.

Loans/Overdrafts to Residents against

Security of India Development Bonds

10D.5 Deleted.

Loans in India against Guarantees by Non-residents

10D.6 (i) Authorised dealers may grant loans and overdrafts to persons, firms and companies in India against the guarantees of individuals, firms and companies (including banks) outside India subject to the following conditions:-

- (a) No direct or indirect outgo of foreign exchange is involved by way of guarantee commission or otherwise.
- (b) The loan is either fully secured by primary security in the form of hypothecation/mortgage of assets by the Indian borrower or guaranteed by an international bank subject to lender bank adhering to the guidelines prescribed by Reserve Bank for capital adequacy, prudential norms, etc. Further loans/overdrafts granted to a resident against international bank guarantee should also be in conformity with the lending discipline prescribed for working capital and term loan purposes by Reserve Bank from time to time.
- (c) Regulations relating to normal margin, interest rates, etc. as stipulated by Reserve Bank from time to time are complied with.

Authorised dealers should, however, apply the usual norms and considerations and obtain such security as they consider necessary.

- (ii) Authorised dealers should promptly report to Reserve Bank, details of cases where

the guarantee has been invoked but the amount has not been remitted by the non-resident guarantor.

Loans to Residents against Shares/Securities/

Properties in India of Non-residents

10D.7 (i) Authorised dealers may grant loans to resident family members of persons of

Indian nationality/origin who have gone abroad for employment, etc. (NRI) for land-based agricultural activities against the security of land held by them in India either singly or jointly with other resident members of the family subject to the following conditions:

- (a) The loan should be need-based and granted only in cases where the total land holding of the NRI does not exceed five (5) hectares in his individual name or jointly with others. The amount of loan should not exceed Rs.3 lakhs.
- (b) The amount of loan should be utilised for carrying on agricultural activities on the existing land holding only and not to be used for acquiring any additional land.
- (c) The loan can be repaid out of income generated from the agricultural activity or by remittances in foreign exchange sent by NRI from abroad or by debit to his NRE/FCNR/NRO account.
- (d) Requirements regarding security, margin, rate of interest etc. as stipulated by Reserve Bank from time to time should be complied with.

(ii) Applications not covered by sub-paragraph (i) above for grant of loans/overdrafts against pledge of collateral viz. shares/securities of Indian companies or immovable property held in India by persons, firms and companies resident outside India should be referred to Reserve Bank for prior approval in [form LOV 1](#).

Loans from Non-resident Relatives

10D.8 Persons (i.e., individuals) resident in India can avail of interest free loans on non-repatriation basis from their non-resident relatives for personal purposes and business activities and **not** for

the purpose of carrying on agricultural/plantation activities, purchase of immovable property, shares, debentures, bonds or for re-lending. Under the general permission granted by Reserve Bank vide its [Notification No. FERA.175/97-RB](#) dated 27th February 1997, such loans can be availed of subject to the following conditions:

- (a) The loans should be from the relatives as defined in Section 6 of the Companies Act, 1956.
- (b) The loan amount should be received through normal banking channels or by debit to the lender's NRE/FCNR account with an authorised dealer.
- (c) The repayment of loan amount is made by credit to the Ordinary Non-resident Rupee (NRO) account of the non-resident lender.

Applications for availing of loans from non-resident relatives on non-repatriation basis but which do not fall within the above criteria or loans on repatriation basis, should be referred to Reserve Bank for prior approval giving full details such as name/address of lender, loan amount, rate of interest, purpose and period of the loan repayment schedule, etc.

Guarantees for Non-residents

10D.9 (i) In terms of Section 26 of FERA, 1973, persons resident in India cannot, except with the general or special permission of the Central Government or Reserve Bank, give

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guarantee in respect of any debt or other obligation or liability (a) of a person resident in India, and due or owing to a person resident outside India; or (b) of a person resident outside India. Reserve Bank has by its [Notification No. FERA.132/93-RB](#) dated 26th April 1993 granted general permission to shipping agents to give, in respect of any debt or other obligation or liability of their foreign shipping principals, guarantees in favour of Income-tax, Customs, Port Trust and other Central and State Government authorities in India, subject to such instructions as may be issued by Reserve Bank from time to time. Shipping agents should abide by the following instructions while giving such guarantees.

- (a) The guarantee should be covered by counter-guarantee of overseas shipping principal to the effect that the latter will reimburse the amounts which the shipping agent may have to pay on behalf of the shipowner under the guarantee. In lieu of specific counter-guarantees, the shipping agents may also obtain a general undertaking from the shipping principal in the form of a letter addressed to the agent providing the following clause:

"This is to clarify that you, as our shipping agents, have the full authority to give guarantees in respect of any of our debts or other obligations or liability in favour of any officer or other authority appointed or constituted under the Income-tax Act, the Customs Act, the Major Ports Act or any other Central or State Act in force in India. You may pay the dues payable to any of those authorities out of our funds representing genuine freight collections and lying with you or at your power or disposal. If any shortfall arises, we will fully reimburse you by making adequate remittance in this regard in foreign exchange through banking channel."

NOTE: *In case of tramp agencies, shipping agents may obtain, if they so desire, such letters of undertaking from the master of the ship instead of overseas principals.*

- (b) Amounts paid by shipping agents should be recovered out of the funds remitted from abroad by the overseas shipping principal through normal banking channels and/or from the latter's surplus freight/passage fare collections in India.
- (ii) Reserve Bank has likewise granted general permission to authorised dealers vide

the above Notification to give guarantees in favour of persons resident in India in respect of any debt or other obligation or liability of a person resident outside India subject to such instructions as may be issued by Reserve Bank from time to time. Authorised dealers may accordingly give on behalf of their overseas Head Office/branches/correspondents or a bank of international repute guarantees/performance bonds in favour of residents of India in connection with genuine transactions involving debt, liability or obligation of non-residents provided the bond/guarantee is covered by a counter guarantee of the overseas Head Office/branch/correspondent or a bank of international repute. Authorised dealers may make rupee payments to the resident beneficiaries immediately when the guarantee is invoked and simultaneously arrange to obtain the reimbursement from the overseas bank concerned which had issued the counter guarantee. Authorised dealers are well advised that they should ensure that counter guarantees are properly evaluated and their own guarantees against such guarantees are not issued in routine manner. Before issuing a guarantee against the counter guarantee from an overseas Head Office/branch/correspondent/bank of international repute, authorised dealers should satisfy themselves that the obligations under the counter guarantee, when invoked, would be honoured by the overseas bank promptly. If the authorised dealer desires to issue guarantee with the condition that payment will be made provided reimbursement has been received from the overseas bank which had issued the counter guarantee, this fact should be made clearly known to the beneficiary in the guarantee document itself. Cases where payments are not received by the authorised dealers when the guarantees of overseas banks are invoked, should be reported to Reserve Bank indicating the steps being taken by the bank to recover the amount due under the guarantee.

NOTE: *Authorised dealers may issue guarantees in favour of overseas organisations issuing travellers cheques in respect of blank travellers cheques stocked for sale by them or on behalf of their constituent who are full-fledged money changers holding valid licences from Reserve Bank, subject to suitable counter guarantee being obtained from the latter. In the event of the guarantee being invoked authorised dealers may effect remittance but should send a separate report thereon furnishing full details to the Chief General Manager, Exchange Control Department, (Forex Market Division), Reserve Bank of India, Central Office, Mumbai 400 001.*