

ATL NIKIMA

Sent at: 26-02-2024 11:33:09

RE: Greens Group - Feasibility Study (first cut draft)

From: aruna@modiproperties.com <aruna@modiproperties.com>

To: swaroop@aeakaadvisors.com

Cc: 'Soham Modi' <sohammodi@modiproperties.com>, nirisha@modiproperties.com, rishabh.arora@modiproperties.com, abhishek@aeakaadvisors.com, priyanka@aeakaadvisors.com, kuldeep@aeakaadvisors.com

Swaroop,

1. My understanding of the matter related to FOCC is as follows:

- a. Outside the FEMA Act there is no entity that can be termed as FOCC or IOCC.
- b. Therefore, the concept of FOCC or IOCC only applies to companies (firms/individuals) to which the FEMA Act is applicable.
- c. The FEMA Act is applicable only to those companies which have dealings in foreign exchange. If a company has no FDI or loans or investments in foreign currency then the FEMA Act does not apply to it.
- d. In the case of SRPL & JRPL, prior to 2022 (i.e., investments made by way of FDI), the FEMA Act did not apply to them.
- e. At the moment SRPL & JRPL are deemed to be non FOCC companies by way of correspondence received from RBI on 31st August, 2023. Note that there is no formal process like appellate authorities, appeals, etc., related to filings made with RBI wrt foreign investments (Eg.: FC-GPR). Therefore, the correspondence dated 31st August, 2023 can be deemed to be final.
- f. FC-GPR are similar forms filed to update the register of foreign investments in the records of RBI. Once the FDI made is returned then as per records of RBI there would be no FDI in SRPL & JRPL.
- g. Since there are several ambiguities in rules concerning DI, it would be best to reserve the FDI in SRPL & JRPL. Once FDI is reversed, the concept of FOCC or IOCC will not apply to SRPL & JRPL.

2. Investment into LLPs – once the FDI in JRPL is reversed there would be no bar on investment by JRPL into LLPs.

3. Way forward – the shares of GILLC and GGILLC to be purchased by MPPL in March, 2024. They are to resold to RJK & SJK in April, 2024 (Nirisha to workout tax implications).

4. As on date RJK & SJK have no borrowals and therefore any lending to private limited companies owned by them will not have any restrictions i.e., such lending would be from their own funds.

We can discuss these issues on Zoom/Teams call. 5.30pm from Thursday to Saturday is preferred. SJK will also join.

Fwd: FOCC - Greens Group

AK NIRISHA

soham modi <sohammodi@modiproperties.com>

Thu 2024-02-22 18:36

To: Ashaiya U Admin <ashaiya@modiproperties.com>

print

Regards,

Soham Modi

From: rishabh.arora . <rishabh.arora@modiproperties.com>

Sent: Thursday, February 22, 2024 4:18:35 PM

To: Soham Modi <sohammodi@modiproperties.com>

Cc: Nirisha . <nirisha@modiproperties.com>

Subject: FOCC - Greens Group

Dear Soham Sir,

I have gone through provisions of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and Master Direction on Foreign Investment in India issued by RBI.

1. Except to the concept of Downstream Investment, **there is no inference of FOCC** in the rules or master direction;
2. There is no specific definition of FOCC, but the same can be inferred from the definitions of **a) company owned by persons resident outside India** and **b) company controlled by persons resident outside India**;
 - "company owned by persons resident outside India" shall mean an Indian company that is owned by persons resident outside India and "LLP owned by persons resident outside India" shall mean an LLP that is owned by persons resident outside India;
 - "company controlled by persons resident outside India" shall mean an Indian company that is controlled by persons resident outside India and "LLP controlled by persons resident outside India" shall mean an LLP that is controlled by persons resident outside India;
3. Conceptually, any investment made by a) NRI; or b) OCI (RJK/SJK); or c) any entity owned and controlled by NRI or OCI (GILLC/GGILLC); on **Non-Repatriation** basis, is at par with domestic investment;
4. But the explanation added to Downstream Investment rule in the year 2021 has specifically identified **NRIs Investments only** to be considered for calculating the control or ownership;
5. As such, there is a dilemma that whether Indian entities (JRPL/SRPL) owned/controlled by OCI (RJK/SJK) will be considered as foreign owned/controlled or not;
6. But while applying the Doctrine of Harmonious Construction, JRPL and SRPL should be considered as Indian owned/controlled Companies and not FOCC; and
7. I have reproduced the relevant definitions dealing with downstream investment.

Harmonious Construction means that when there arises a conflict between different statutes or between the statutes, in such circumstances, courts try to interpret them in a way that makes them work together smoothly instead of declaring other statutes void. The main aim of this doctrine is to give effect to all the provisions while maintaining the overall coherence and purpose of the law.

Downstream Investment	• “downstream investment” shall mean investment made by an Indian entity which has total foreign investment in it of another Indian entity;
Indian Entity	• “Indian entity” shall mean an Indian company or a LLP;
Total Foreign Investment	• “total foreign investment” means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis;
Foreign Investment	• “foreign investment” means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP;
Indirect Foreign Investment	• “indirect foreign investment” means downstream investment received by an Indian entity from (A) another Indian entity (IE) which has received foreign investment and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India
Explanation	• An investment made by an Indian entity which is owned and controlled by NRI(s), on a nonrepatriation basis, shall not be considered for calculation of indirect foreign investment.

Thanks with Regards

Rishabh Arora
 Company Secretary
 Modi Properties Pvt. Ltd.
 +919465777268

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Greens Group

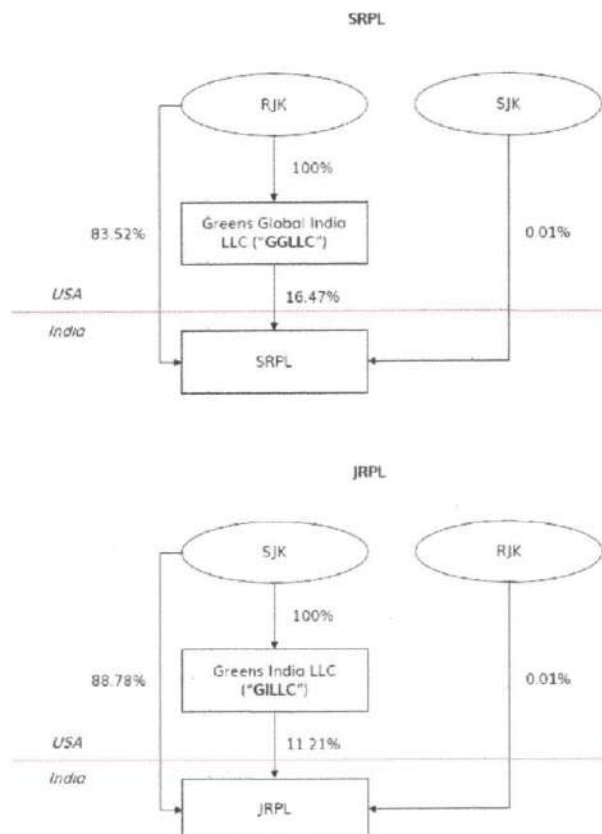
Feasibility Study

February 13, 2024

Draft for discussion

1. OUR UNDERSTANDING OF THE FACTS

- 1.1 Rajesh Kumar Jayantilal Kadakia ("RJK") and Sharad Kumar Jayantilal Kadakia ("SJK") are Overseas Citizens of India ("OCIs") and hold citizenship in the United States of America. We understand that RJK and SJK were persons resident outside India for India tax and regulatory purposes at the time of investments and continue/ will continue to be so for the Financial Year ("FY") 2023-24 and onwards.
- 1.2 SDNMKJ Realty Private Limited ("SRPL") and JMK GEC Realtors Private Limited ("JRPL") are private companies incorporated in India and engaged in the business of construction, development, and leasing of real estate properties.
- 1.3 The assets of SRPL and JRPL comprise substantially of investment in the immovable property being Ramkey Selinium, a corporate premises in Hyderabad, from which lease rentals are earned. JRPL and SRPL have invested in and advanced loans to other Indian entities.
- 1.4 The shareholding pattern, as of date, of SRPL and JRPL is as depicted below:



- 1.5 The investment of RJK and SJK in SRPL and JRPL was undertaken on a non-repatriation basis and out of income earned/ funds inherited in India. In contrast, investment by GGLLC in SRPL and GILLC in JRPL was undertaken on a repatriation basis.
- 1.6 Investments in SRPL and JRPL are held by its shareholders as capital assets and not as stock-in-trade.
- 1.7 The directors of SRPL and JRPL, as of date, are listed below:

Director	Citizenship	Residential Status for India tax and regulatory purposes
RJK	USA	Person resident outside India
SJK	USA	
Soham Modi	India	Resident
Tejal Modi	India	

- 1.8 The management of Greens Group has approached Aeka Advisors India LLP to evaluate the feasibility of certain transactions and provide clarifications from an India regulatory perspective.

2. QUERIES

- 2.1 Are investments by SRPL and JRPL in other Indian companies and Limited Liability Partnerships ("LLPs") subject to the downstream investment rules under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("NDI Rules")?

- 2.1.1 An Indian entity (ie, an Indian company or an LLP) that has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines, and other attendant conditions as applicable to Foreign Direct Investment ("FDI").

- 2.1.2 Indirect foreign investment means downstream investment ie, investment in the capital instruments or the capital, as the case may be, in an Indian entity by another Indian entity which:

- has received total foreign investment (includes indirect foreign investment); and
- is not owned and not controlled by resident Indian citizens or is owned

or controlled by persons resident outside India – commonly referred to as a Foreign Owned and/ or Controlled Company ("FOCC").

- 2.1.3 An Indian company that is owned and controlled by resident Indian citizens or that is carved out from the applicability of the downstream investment regulations is commonly referred to as an Indian Owned and Controlled Company ("IOCC").
- 2.1.4 The NDI Rules prescribe what determines 'ownership' and 'control' to ascertain whether an Indian company is an FOCC or IOCC.
- 2.1.5 'Ownership' of an Indian company refers to the beneficial holding of more than 50% of the equity instruments of such company. A company is said to be owned by resident Indian citizens if the ownership of the Indian company is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
- 2.1.6 It is pertinent to note that the following persons may purchase equity instruments issued by a company on a non-repatriation basis – such investment shall be deemed to be domestic investment at par with the investment made by residents:
- a) A Non-resident Indian ("NRI") ie, an individual resident outside India who is a citizen of India.
 - b) An OCI ie, an individual resident outside India who holds an OCI card.
 - c) A company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs ("Foreign Entities").
- 2.1.7 It has been clarified under the NDI Rules that investments made by Indian entities which are owned and controlled by NRIs, on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.8 Though the investments made by OCIs or Foreign Entities on a non-repatriation basis are considered on par with resident investments and are treated like domestic investments, the investments made by Indian entities owned and/ or controlled by such OCIs or Foreign Entities on a non-repatriation basis have no specific carve-out. There is no clarity as to whether such investments attract reporting and compliance requirements concerning downstream investments.

- 2.1.9 As per the Master Directions – Foreign Investment in India (updated up to March 17, 2022) ["NDI MD"], the underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". NRI investments on a non-repatriation basis are treated as deemed domestic investments. Accordingly, an investment made by an Indian entity that is owned and controlled by NRIs, wherein the investment by such NRIs is made on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.10 While it could be argued that similar reasoning may also be applied to investments made by an Indian entity owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, the following points are worth noting:
- a) The specific use of the phrase 'Indian citizens' while describing IOCCs.
 - b) Carve out only to Indian entities that are owned and controlled by NRIs.
- 2.1.11 Per the correspondences received from the Reserve Bank of India ("RBI") on August 31, 2023, investments by SRPL and JRPL in Indian companies were concluded not to be indirect foreign investments by citing the above provision under the NDI MD. We understand that the fact that RJK and SJK are OCI cardholders was highlighted in communications to RBI. However, this fact was not deliberated upon by the RBI.
- 2.1.12 Moreover, based on discussions with Authorised Dealer Banks ("AD Banks") and in the absence of specific exclusions, we understand that investment by Indian companies that are owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, will be construed to be indirect foreign investments.
- 2.1.13 We shall now proceed with the evaluation of who controls SRPL and JRPL.
- 2.1.14 'Control' in a company means the right to appoint the majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement. A company is said to be controlled by resident Indian citizens when the control is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

- 2.1.15 The above definition has broad contours and is dependent on the facts and circumstances of each case. What is to be evaluated is the factum of control either over the management or over policy making.
- 2.1.16 We have been given to understand that by virtue of their shareholding and directorship, RJK has control over SRPL while SJK has control over JRPL. Control is not held by any other person either by way of statute or agreement.
- 2.1.17 Given the above, a view could be taken that SRPL and JRPL are owned and controlled by persons resident outside India and investments made by such entities in other Indian entities qualify as indirect foreign investments.
- 2.1.18 As of date, SRPL and JRPL have invested in equity instruments of Indian companies and in the capital of a partnership firm. Please note that downstream investment by an FOCC in a partnership firm is not permitted.
- 2.1.19 Please note that in case of indirect foreign investments, the following compliances are to be undertaken:
- a) Downstream investment shall have the approval of the board of directors as also a shareholders' agreement, if any.
 - b) Only funds received from abroad or internal accruals ie, profits transferred to reserve account after payment of taxes, are permitted to be used for making a downstream investment. Funds borrowed in the domestic markets cannot be used.
 - c) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of the NDI Rules for the downstream investment made by it at the second level and so on and so forth.
 - d) A certificate to this effect is to be obtained from its statutory auditor on an annual basis and compliance with the NDI Rules shall be mentioned in the director's report in the annual report.
 - e) The Secretariat for Industrial Assistance, DPIIT is to be notified within 30 days of making the downstream investment.
 - f) The Indian entity making the downstream investment has to file Form DI with the RBI within 30 days of allotment of the equity instruments.

- g) Pricing guidelines to be adhered to. The price of equity instruments **shall not be less than** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- h) When a company that does not have any operations makes indirect foreign investment or commences business, it will have to comply with the relevant sectoral conditions on entry routes, conditionalities, and caps.

2.2 **Would it be required to re-align the shareholding of SRPL and JRPL such that SRPL is wholly owned by RJK and JRPL is wholly owned by SJK for JRPL and SRPL to be construed as IOCC?**

- a) If yes, what are the options that could be evaluated for the re-alignment of shareholding of SRPL and JRPL?
- b) If re-alignment of shareholding of SRPL and JRPL is not necessary, can the shareholding of GLLC in SRPL and of GILLC in JRPL be increased up to 49%?
- c) Is it permissible for equity shares of SRPL to be transferred by GLLC to RJK and for equity shares of JRPL to be transferred by GILLC to SJK? What are the key implications under the Foreign Exchange Management Act, 1999 ("FEMA") and Income-tax Act, 1961 ("IT Act")?
- d) **What are the key implications under FEMA and the IT Act on transfer of equity shares of SRPL and JRPL to Modi Properties Private Limited ("MPPL") and the subsequent transfer of such shares by MPPL to RJK and SJK?**

2.2.1 Given that SRPL and JRPL qualify as FOCCs on account of RJK's and SJK's holdings in SRPL and JRPL respectively, re-alignment of shareholding as envisaged would not be particularly beneficial.

2.2.2 Nonetheless, the key implications from an IT Act and FEMA perspective for the scenarios envisaged by the management for the re-alignment of shareholding of JRPL and SRPL have been captured below.

2.2.3 Scenario 1 : Direct transfer to RJK and SJK

a) FEMA

- A person resident outside India, not being an NRI or OCI, may transfer by way of sale or gift the equity instruments of an Indian company held by him to any person resident outside India. Given this, equity shares of SRPL held by GLLC may be transferred to RJK and equity shares of JRPL held by GILLC may be transferred to SJK.
- Given that the equity shares of SRPL and JRPL are held by GLLC and GILLC respectively on a repatriation basis, on transfer, such shares would automatically be held by RJK and SJK on a repatriation basis.
- Please note that the pricing guidelines and reporting requirements under the NDI Rules do not apply to the transfer of equity instruments between persons resident outside India. Further, there are no specifications on modes of payment.

b) IT Act

In the hands of GLLC/ GILLC

- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of GLLC and GILLC respectively. Such gains, if any, will be taxable at 10%++ if the equity shares are held for more than 24 months, or else at 40%++.
 - As per Section 50CA of the IT Act, where the consideration received on transfer of equity shares (other than quoted shares) is less than its tax fair market value ("**Tax FMV**"), such Tax FMV shall be deemed to be the full value of consideration for the purpose of computing capital gains and tax thereon, if any.
 - Tax FMV for Section 50CA of the IT Act shall be determined in accordance with Rule 11UA of the Income-tax Rules, 1962 ("**IT Rules**") – akin to net book value.
- As per Section 206C(1H) of the IT Act, every seller must collect tax at source from the buyer, on the sale of goods (includes unlisted shares), at the rate of 0.10% of the sale consideration exceeding INR 50 lakhs in an FY ["**TCS Provisions**"].

- The TCS Provisions are applicable where the total sales, gross receipts or turnover from the business of the seller exceeds INR 10 crores in the FY immediately preceding the FY in which the goods are sold.
- However, the aforesaid provisions would not apply if (i) the goods are exported out of India or (ii) the buyer is liable to withhold tax and has withheld such taxes.
- We have been informed that the total sales, gross receipts or turnover from the business of GGLLC and GILLC have not exceeded INR 10 crores in FY 2022-23, and hence, neither does GGLLC nor GILLC qualify as a 'seller' to invoke the TCS Provisions.

In the hands of RJK/ SJK

- As per Section 56(2)(x) of the IT Act [**"Recipient Tax"**], where a person receives any property (includes shares) from another person for a consideration which is less than its Tax FMV, the excess of the Tax FMV over the consideration paid (where it exceeds INR 50,000) would be subject to tax in the hands of the recipient under the head 'Income from other sources' upto 30%++.
- We understand that the transfer, if undertaken, will be carried out at or above the Tax FMV and accordingly, Recipient Tax shall not apply.
- Tax FMV for the purposes of Section 56(2)(x) of the IT Act shall be determined in accordance with Rule 11UA of the IT Rules – akin to net book value.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.

2.2.4 Scenario 2 : Transfer to MPPL and subsequent transfer to RJK and SJK

a) FEMA

Leg 1 : Transfer of equity shares of SRPL and JRPL by GGLIC and GILCO respectively to MPPL.

- We understand that MPPL is an IOCC.
- A person resident outside India, holding equity instruments of an Indian company may transfer the same to a person resident in India by way of sale or gift and adhere to the pricing guidelines, documentation, and reporting requirements under the NDI Rules.
- The price of equity instruments of an Indian company transferred by a person resident outside India to a person resident in India shall not exceed the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- The sale proceeds (net of taxes) may be remitted abroad.
- Form FC-TRS shall be filed for the transfer of equity instruments between a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India.
 - The onus of reporting shall be on the resident transferee.
 - Form FC-TRS shall be filed within 60 days of the transfer of equity instruments or receipt/ remittance of funds whichever is earlier.

Leg 2 : Transfer of equity shares of SRPL and JRPL by MPPL to RJK and SJK respectively.

- A person resident in India holding equity instruments of an Indian company may transfer the same to a person resident outside India by way of sale subject to the adherence to entry routes, sectoral caps, pricing guidelines, and other attendant conditions as applicable and documentation and reporting requirements for such transfers under the NDI Rules.

- The entry routes, sectoral caps, pricing guidelines, and other attendant conditions, however, will not apply in case the transferee is an OCI acquiring such investment on a non-repatriation basis.
- For investment on a non-repatriation basis, the amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account.

b) IT Act

In the hands of GGLLC/ GILLC

- Implications captured under para 2.2.3 (b) above in the hands of GGLLC/ GILLC to similarly apply.

In the hands of MPPL

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.
- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of MPPL. Such gains, if any, will be taxable at 22%++ (assumed concessional tax regime opted for) given the equity shares will be held for not more than 24 months.
 - Provisions of Section 50CA of the IT Act would not apply where the share transfer is undertaken at or above the Tax FMV.
- TCS Provisions, if applicable, to be complied with.

In the hands of RJK/ SJK

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.

2.3 Are there any FEMA implications if investments are made by JRPL and SRPL in the following modes in Indian companies:

- a) Equity Shares, Compulsorily Convertible Preference Shares ("CCPS") or Compulsorily Convertible Debentures ("CCD")
- b) Optionally Convertible Debentures ("OCD") or Optionally Convertible, Redeemable Preference Shares ("OCPS")
- c) Non-convertible Debentures ("NCD") or Redeemable Preference Shares ("RPS")
- d) Inter-corporate Deposits ("ICD")

2.3.1 It is pertinent to note that the downstream investment regulations apply only to investments made by an Indian entity in the 'capital instruments' of another Indian entity. The term 'capital instruments' has not been defined under the NDI Rules.

2.3.2 Guidance may be taken from the erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("TISPRO"). We wish to highlight that the NDI Rules have superseded TISPRO and the term capital instrument used in TISPRO has been replaced by equity instrument in the NDI Rules.

2.3.3 Given this, capital instruments may be considered to have the same meaning as equity instruments under the NDI Rules. Equity instruments have been defined under the NDI Rules to mean equity shares, convertible debentures, preference shares, and share warrants issued by an Indian company.

2.3.4 'Convertible debentures' means fully and mandatorily convertible debentures while 'preference shares' means fully and mandatorily convertible preference shares. Thus, equity instruments do not include optionally convertible or non-convertible securities such as OCD, OCPS, NCD, and RPS.

2.3.5 Having regard to the above, one can say that investment in optionally/ non-convertible instruments by an FOCC would not require adherence to the NDI Rules. However, on conversion of optionally convertible securities into equity instruments, one has to adhere to downstream investment regulations.

2.3.6 Accordingly, the pricing guidelines would apply at the time of conversion and not at the time of investment in the case of optionally convertible instruments. However, AD Banks may take a view that pricing at the time of investment

should also be considered to determine the floor price.

- 2.3.7 A question may arise as to whether optionally convertible/ non-convertible instruments and ICDs take the colour of External Commercial Borrowings ("ECB") or debt instruments.
- 2.3.8 Such instruments would be out of the purview of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 and Foreign Exchange Management (Guarantees) Regulations, 2000 (collectively "**ECB Regulations**") and Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Debt Instruments Regulations**") as they apply only to investments or lending by a person resident outside India into India. An FOCC being an Indian entity would not be subject to the ECB Regulations and Debt Instruments Regulations.
- 2.3.9 We wish to highlight that the Companies Act, 2013 ("**Companies Act**") provides a framework for acceptance of deposits by companies. As per Section 2(31) of the Companies Act, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI.
- 2.3.10 Any amount received by a company from any other company is carved out from the definition of deposit. Given this, acceptance of loans and deposits by an Indian company from JRPL and SRPL would fall outside the ambit of the aforementioned framework.
- 2.4 Is it permissible for JRPL and SRPL to invest in Biopolis GV LLP and Inventopolis LLP (collectively "**Development LLPs**") which are engaged in the business of construction-development and earning of lease rentals?
- 2.4.1 A person resident outside India may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions ie, investment conditions prescribed for certain sectors.
- 2.4.2 Similarly, indirect foreign investment is permitted in an LLP in sectors where foreign investment is allowed up to 100% under the automatic route and there are no FDI linked performance conditions.
- 2.4.3 Construction-development projects include the development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships.

- 2.4.4 While 100% FDI under the automatic route is permitted for entities undertaking construction-development projects, certain FDI linked performance conditions have been prescribed.
- 2.4.5 Given the above, indirect foreign investment in the Development LLPs would not be permitted under the automatic route.
- 2.5 Is it feasible for SRPL and JRPL to borrow from banks in India against the FCNR (B) deposit of RJK and SJK or by utilizing the standby letter of credit issued by the overseas banker of RJK and SJK?
- 2.5.1 We understand that the proposed borrowings are intended to be utilized for the business of SRPL and JRPL as well as for investment in group entities.
- 2.5.2 Per RBI directions, typically, banks cannot finance the acquisition of equity shares. Given this, borrowings from banks may not be leveraged for investments in other Indian entities.
- 2.5.3 As per the Foreign Exchange Management (Deposit) Regulations, 2016 ("**Deposit Regulations**"), AD Banks may grant loans (includes fund based/ non-fund based facilities) to third party resident individuals/ firms/ companies in India against the collateral of fixed deposits held in FCNR (B) account, subject to the following conditions:
- a) The loan should be utilised for personal purposes or for carrying on business activities except for relending or carrying on agricultural/ plantation activities or for investment in real estate business.
 - b) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.
 - c) The usual norms and considerations as applicable in the case of advances to trade/ industry shall apply to such credit facilities.
 - d) The margin requirement shall be notionally calculated on the Rupee equivalent of the deposits.
- 2.5.4 Given the above, SRPL and JRPL may borrow from banks in India against the FCNR (B) deposit of RJK and SJK for business purposes.
- 2.5.5 As per the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations (updated as on December 22, 2023), borrowing

and lending in Indian Rupees between two residents does not attract any provisions of FEMA.

2.5.6 In cases where a Rupee facility that is either fund based or non-fund based (such as a letter of credit/ guarantee/ letter of undertaking/ letter of comfort) is guaranteed by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.

2.5.7 The arrangements shall be with the following terms:

- a) The non-resident guarantor may discharge the liability by i) payment out of Rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/ NRE account maintained with an AD Bank in India.
- b) The non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery, he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/ NRE account.
- c) The repayment may be made by credit to the FCNR(B)/ NRE/ NRO account of the guarantor, provided the amount remitted/ credited shall not exceed the Rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
- d) However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- e) General permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.

2.5.8 Based on our discussions with the AD Banks, we understand that while standby letter of credit is not treated as a guarantee, in case the standby letter of credit is drawn, the aforementioned terms will similarly apply.

2.6 **Is it permissible for RJK and SJK to borrow from banks/ financial institutions/ private lenders, in India for the purpose of:**

- a) **Onward lending (unsecured loan) to SRPL and JRPL**

b) Investment in equity shares, CCD or CCPS of SRPL and JRPL

c) Investment in OCD or OCPS of SRPL and JRPL

d) Investment in NCD or RPS of SRPL and JRPL

on repatriation or non-repatriation basis.

2.6.1 A person resident in India is permitted to lend to a borrower being a person resident outside India under the automatic route only in specific cases under the ECB Regulations.

2.6.2 An AD Bank in India may grant a loan in INR to an NRI/ OCI Cardholder for its own business purposes. Such loans may not be used for restricted end uses such as investment in capital markets and real estate activity.

2.6.3 Given that AD Banks and persons other than AD Banks are not specifically permitted to lend to borrowers being persons resident outside India under the automatic route for the purposes of relending or investment in India, borrowings by RJK and SJK as envisaged would not be feasible.

2.6.4 Please note, AD Banks may grant loans in India to the holders of NRE account/ FCNR(B) deposit against security of funds held in such accounts for the purpose of making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.

2.6.5 Repayment of the loan shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local rupee resources in the NRO account of the borrower.

2.6.6 However, in any case, investment by RJK and SJK in Indian entities would require adherence to NDI Rules, ECB Regulations and Debt Instruments Regulations, as the case may be.

2.7 Is SRPL or JRPL a Non-banking Financial Company ("NBFC") or a Core Investment Company ("CIC")?

2.7.1 In terms of the Reserve Bank of India Act, 1934 ("RBI Act") and the rules and clarifications prescribed thereunder, no company shall commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration and complying with related conditions thereto.

2.7.2 An NBFC has been defined to mean:

- a) A financial institution which is a company.
- b) A non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner.
- c) Such other non-banking institution or class of such institutions, as may be notified.

2.7.3 A financial institution means any non-banking institution that carries on as its business or part of its business any of the following activities:

- a) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own.
- b) The acquisition of shares, stocks, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature.
- c) Letting or delivering of any goods to a hirer under a hire-purchase agreement.
- d) The carrying on of any class of insurance business.
- e) Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries, or any business, which is similar thereto.
- f) Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person.

2.7.4 Only companies predominantly engaged in financial activity would be required to be registered with and be regulated by RBI. Hence, if the company is engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, or sale or construction of immovable property as its principal business and financial business constitutes a minor portion of its operations, it will not be regulated by the RBI.

- 2.7.5 As per the press release dated April 8, 1999, to identify whether a particular company is an NBFC, the assets and income pattern as evidenced by the last audited balance sheet date is to be considered to decide its principal business.
- 2.7.6 'Financial activity' is deemed to be the principal business activity if a company satisfies the below mentioned 50-50 test:
- a) Financial assets are more than 50% of its total assets (netted off by intangible assets); and
 - b) Income from financial assets should be more than 50% of the gross income.
- 2.7.7 Financial assets include assets that are financial in nature except cash, bank deposits, advance payment of taxes and deferred tax payments.
- 2.7.8 It has been clarified by the RBI that the activity of 'leasing and finance' which is amongst the activities undertaken by NBFC covers only 'financial leases' and not 'operating leases'.
- 2.7.9 Based on a perusal of the audited financials of SRPL and JRPL for the period ended March 31, 2023, it is apparent that the 50-50 test will not be met. This evaluation has to be made on a year on year basis.
- 2.7.10 However, in a scenario where Ramkey Selenium is transferred, given the assets would then substantially comprise of investments in and loans to group entities and the income would majorly comprise of income from such investments and loans, the risk of SRPL and JRPL qualifying as an NBFC cannot be ruled out.
- 2.7.11 CIC means an NBFC carrying on the business of acquisition of shares and securities having total assets of not less than INR 100 crore either individually or in aggregate along with other CIC in the Group and which raises or holds public funds. The following conditions are to be satisfied as on the date of the last audited balance sheet company:
- a) Holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies.
 - b) Investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years

- 3.4 Notwithstanding anything to the contrary, this note was prepared exclusively for JRPL and SRPL and is based on the specific facts presented to us by JRPL and SRPL as at the date of this note. The advice is dependent on specific facts and circumstances and may not be appropriate to another party. This note was prepared with only the interests of JRPL and SRPL in mind and was not planned or carried out in the contemplation of any use by any other party.
- 3.5 Aeka Advisors, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) howsoever arising, and shall not be liable for any claim whatsoever in respect of any loss, damage or expense of whatever nature which is caused to or suffered by any other party.
- 3.6 This note or any portion thereof may not be distributed or otherwise made available to anyone else without our prior written consent. In various sections of this document, for ease of understanding and as a stylistic matter, terms such as "is" or "will" or "should" may be used. Such language should not be construed to alter the "Conclusions" section of this document.
- 3.7 This advice is not intended or written to be used, and it cannot be used, for the purpose of avoiding any taxes and applicable penalties. The content of this note is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter.

from the date of issue) in group companies constitute not less than 60% of its net assets.

c) Does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.

d) It does not carry on any other financial activity.

2.7.12 Given that SRPL and JRPL are not NBFCs, it could be argued that they do not qualify as CICs even if the conditions stipulated therein are satisfied. However, given that RBI has clarified that CICs need not meet the principal business criteria stipulated for NBFCs, one can also argue that if conditions stipulated for CICs are satisfied, CIC registration would have to be obtained.

2.7.13 As of date, in any case, given that the total assets of SRPL and JRPL do not exceed INR 100 crore nor do they satisfy other conditions prescribed, SRPL and JRPL would not be construed as CICs.

3. SCOPE LIMITATION

3.1 The content of the note and any views expressed therein are entirely based on information and documentation provided to us. Our conclusions are based on the completeness and accuracy of the stated facts and assumptions. Any inaccuracy could have a material impact on our views or conclusions and should therefore be intimated to us immediately.

3.2 The conclusions reached and views expressed in the note are matters of view. Our view is based on our understanding of the India law and regulations prevailing as of the date of this note and our past experience with the tax and/or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.

3.3 Legislation, its administrative and judicial interpretation, and the policies of the tax and/or regulatory authorities are subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulation occurring after the date of this note.



Greens Group

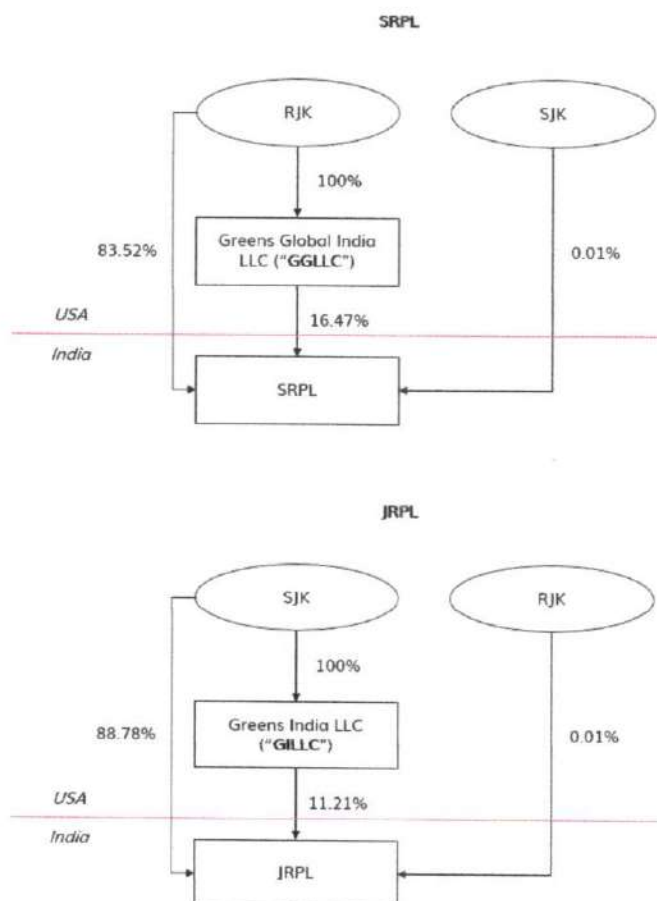
Feasibility Study

February 13, 2024

Draft for discussion

1. OUR UNDERSTANDING OF THE FACTS

- 1.1 Rajesh Kumar Jayantilal Kadakia ("RJK") and Sharad Kumar Jayantilal Kadakia ("SJK") are Overseas Citizens of India ("OCIs") and hold citizenship in the United States of America. We understand that RJK and SJK were persons resident outside India for India tax and regulatory purposes at the time of investments and continue/ will continue to be so for the Financial Year ("FY") 2023-24 and onwards.
- 1.2 SDNMKJ Realty Private Limited ("SRPL") and JMK GEC Realtors Private Limited ("JRPL") are private companies incorporated in India and engaged in the business of construction, development, and leasing of real estate properties.
- 1.3 The assets of SRPL and JRPL comprise substantially of investment in the immovable property being Ramkey Selinium, a corporate premises in Hyderabad, from which lease rentals are earned. JRPL and SRPL have invested in and advanced loans to other Indian entities.
- 1.4 The shareholding pattern, as of date, of SRPL and JRPL is as depicted below:



- 1.5 The investment of RJK and SJK in SRPL and JRPL was undertaken on a non-repatriation basis and out of income earned/ funds inherited in India. In contrast, investment by GGLLC in SRPL and GILLC in JRPL was undertaken on a repatriation basis.
- 1.6 Investments in SRPL and JRPL are held by its shareholders as capital assets and not as stock-in-trade.
- 1.7 The directors of SRPL and JRPL, as of date, are listed below:

Director	Citizenship	Residential Status for India tax and regulatory purposes
RJK	USA	Person resident outside India
SJK	USA	
Soham Modi	India	Resident
Tejal Modi	India	

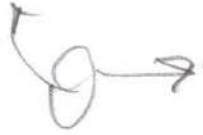
- 1.8 The management of Greens Group has approached Aeka Advisors India LLP to evaluate the feasibility of certain transactions and provide clarifications from an India regulatory perspective.

2. **QUERIES**

- 2.1 **Are investments by SRPL and JRPL in other Indian companies and Limited Liability Partnerships ("LLPs") subject to the downstream investment rules under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("NDI Rules")?**
- 2.1.1 An Indian entity (ie, an Indian company or an LLP) that has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines, and other attendant conditions as applicable to Foreign Direct Investment ("FDI").
- 2.1.2 Indirect foreign investment means downstream investment ie, investment in the capital instruments or the capital, as the case may be, in an Indian entity by another Indian entity which:
- has received total foreign investment (includes indirect foreign investment); and
 - is not owned and not controlled by resident Indian citizens or is owned

or controlled by persons resident outside India – commonly referred to as a Foreign Owned and/ or Controlled Company ("FOCC").

- 2.1.3 An Indian company that is owned and controlled by resident Indian citizens or that is carved out from the applicability of the downstream investment regulations is commonly referred to as an Indian Owned and Controlled Company ("IOCC").
- 2.1.4 The NDI Rules prescribe what determines 'ownership' and 'control' to ascertain whether an Indian company is an FOCC or IOCC.
- 2.1.5 'Ownership' of an Indian company refers to the beneficial holding of more than 50% of the equity instruments of such company. A company is said to be owned by resident Indian citizens if the ownership of the Indian company is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
- 2.1.6 It is pertinent to note that the following persons may purchase equity instruments issued by a company on a non-repatriation basis – such investment shall be deemed to be domestic investment at par with the investment made by residents:
- a) A Non-resident Indian ("NRI") ie, an individual resident outside India who is a citizen of India.
 - b) An OCI ie, an individual resident outside India who holds an OCI card.
 - c) A company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs ("Foreign Entities").
- 2.1.7 It has been clarified under the NDI Rules that investments made by Indian entities which are owned and controlled by NRIs, on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.8 Though the investments made by OCIs or Foreign Entities on a non-repatriation basis are considered on par with resident investments and are treated like domestic investments, the investments made by Indian entities owned and/ or controlled by such OCIs or Foreign Entities on a non-repatriation basis have no specific carve-out. There is no clarity as to whether such investments attract reporting and compliance requirements concerning downstream investments.

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- 2.1.9 As per the Master Directions – Foreign Investment in India (updated up to March 17, 2022) [**“NDI MD”**], the underlying principle of the downstream investment guidelines is that “what cannot be done directly shall not be done indirectly”. NRI investments on a non-repatriation basis are treated as deemed domestic investments. Accordingly, an investment made by an Indian entity that is owned and controlled by NRIs, wherein the investment by such NRIs is made on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.10 While it could be argued that similar reasoning may also be applied to investments made by an Indian entity owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, the following points are worth noting:
- a) The specific use of the phrase ‘Indian citizens’ while describing IOCCs.
 - b) Carve out only to Indian entities that are owned and controlled by NRIs.
- 2.1.11 Per the correspondences received from the Reserve Bank of India (**“RBI”**) on August 31, 2023, investments by SRPL and JRPL in Indian companies were concluded not to be indirect foreign investments by citing the above provision under the NDI MD. We understand that the fact that RJK and SJK are OCI cardholders was highlighted in communications to RBI. However, this fact was not deliberated upon by the RBI.
- 2.1.12 Moreover, based on discussions with Authorised Dealer Banks (**“AD Banks”**) and in the absence of specific exclusions, we understand that investment by Indian companies that are owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, will be construed to be indirect foreign investments.
- 2.1.13 We shall now proceed with the evaluation of who controls SRPL and JRPL.
- 2.1.14 ‘Control’ in a company means the right to appoint the majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement. A company is said to be controlled by resident Indian citizens when the control is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
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- 2.1.15 The above definition has broad contours and is dependent on the facts and circumstances of each case. What is to be evaluated is the factum of control either over the management or over policy making.
- 2.1.16 We have been given to understand that by virtue of their shareholding and directorship, RJK has control over SRPL while SJK has control over JRPL. Control is not held by any other person either by way of statute or agreement.
- 2.1.17 Given the above, a view could be taken that SRPL and JRPL are owned and controlled by persons resident outside India and investments made by such entities in other Indian entities qualify as indirect foreign investments.
- 2.1.18 As of date, SRPL and JRPL have invested in equity instruments of Indian companies and in the capital of a partnership firm. Please note that downstream investment by an FOCC in a partnership firm is not permitted.
- 2.1.19 Please note that in case of indirect foreign investments, the following compliances are to be undertaken:
- a) Downstream investment shall have the approval of the board of directors as also a shareholders' agreement, if any.
 - b) Only funds received from abroad or internal accruals ie, profits transferred to reserve account after payment of taxes, are permitted to be used for making a downstream investment. Funds borrowed in the domestic markets cannot be used.
 - c) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of the NDI Rules for the downstream investment made by it at the second level and so on and so forth.
 - d) A certificate to this effect is to be obtained from its statutory auditor on an annual basis and compliance with the NDI Rules shall be mentioned in the director's report in the annual report.
 - e) The Secretariat for Industrial Assistance, DPIIT is to be notified within 30 days of making the downstream investment.
 - f) The Indian entity making the downstream investment has to file Form DI with the RBI within 30 days of allotment of the equity instruments.

- g) Pricing guidelines to be adhered to. The price of equity instruments **shall not be less than** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- h) When a company that does not have any operations makes indirect foreign investment or commences business, it will have to comply with the relevant sectoral conditions on entry routes, conditionalities, and caps.

2.2 Would it be required to re-align the shareholding of SRPL and JRPL such that SRPL is wholly owned by RJK and JRPL is wholly owned by SJK for JRPL and SRPL to be construed as IOCC?

- a) If yes, what are the options that could be evaluated for the re-alignment of shareholding of SRPL and JRPL?
- b) If re-alignment of shareholding of SRPL and JRPL is not necessary, can the shareholding of GGLLC in SRPL and of GILLC in JRPL be increased up to 49%?
- c) Is it permissible for equity shares of SRPL to be transferred by GGLLC to RJK and for equity shares of JRPL to be transferred by GILLC to SJK? What are the key implications under the Foreign Exchange Management Act, 1999 ("FEMA") and Income-tax Act, 1961 ("IT Act")?
- d) What are the key implications under FEMA and the IT Act on transfer of equity shares of SRPL and JRPL to Modi Properties Private Limited ("MPPL") and the subsequent transfer of such shares by MPPL to RJK and SJK?

2.2.1 Given that SRPL and JRPL qualify as FOCCs on account of RJK's and SJK's holdings in SRPL and JRPL respectively, re-alignment of shareholding as envisaged would not be particularly beneficial.

2.2.2 Nonetheless, the key implications from an IT Act and FEMA perspective for the scenarios envisaged by the management for the re-alignment of shareholding of JRPL and SRPL have been captured below.

2.2.3 Scenario 1 : Direct transfer to RJK and SJK

a) FEMA

- A person resident outside India, not being an NRI or OCI, may transfer by way of sale or gift the equity instruments of an Indian company held by him to any person resident outside India. Given this, equity shares of SRPL held by GLLC may be transferred to RJK and equity shares of JRPL held by GILLC may be transferred to SJK.
- Given that the equity shares of SRPL and JRPL are held by GLLC and GILLC respectively on a repatriation basis, on transfer, such shares would automatically be held by RJK and SJK on a repatriation basis.
- Please note that the pricing guidelines and reporting requirements under the NDI Rules do not apply to the transfer of equity instruments between persons resident outside India. Further, there are no specifications on modes of payment.

b) IT Act

In the hands of GLLC/ GILLC

- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of GLLC and GILLC respectively. Such gains, if any, will be taxable at 10%++ if the equity shares are held for more than 24 months, or else at 40%++.
 - As per Section 50CA of the IT Act, where the consideration received on transfer of equity shares (other than quoted shares) is less than its tax fair market value ("Tax FMV"), such Tax FMV shall be deemed to be the full value of consideration for the purpose of computing capital gains and tax thereon, if any.
 - Tax FMV for Section 50CA of the IT Act shall be determined in accordance with Rule 11UA of the Income-tax Rules, 1962 ("IT Rules") – akin to net book value.
- As per Section 206C(1H) of the IT Act, every seller must collect tax at source from the buyer, on the sale of goods (includes unlisted shares), at the rate of 0.10% of the sale consideration exceeding INR 50 lakhs in an FY ["TCS Provisions"].

- The TCS Provisions are applicable where the total sales, gross receipts or turnover from the business of the seller exceeds INR 10 crores in the FY immediately preceding the FY in which the goods are sold.
- However, the aforesaid provisions would not apply if (i) the goods are exported out of India or (ii) the buyer is liable to withhold tax and has withheld such taxes.
- We have been informed that the total sales, gross receipts or turnover from the business of GGLLC and GILLC have not exceeded INR 10 crores in FY 2022-23, and hence, neither does GGLLC nor GILLC qualify as a 'seller' to invoke the TCS Provisions.

In the hands of RJK/ SJK

- As per Section 56(2)(x) of the IT Act [**"Recipient Tax"**], where a person receives any property (includes shares) from another person for a consideration which is less than its Tax FMV, the excess of the Tax FMV over the consideration paid (where it exceeds INR 50,000) would be subject to tax in the hands of the recipient under the head 'Income from other sources' upto 30%+.
- We understand that the transfer, if undertaken, will be carried out at or above the Tax FMV and accordingly, Recipient Tax shall not apply.
- Tax FMV for the purposes of Section 56(2)(x) of the IT Act shall be determined in accordance with Rule 11UA of the IT Rules – akin to net book value.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.

2.2.4 Scenario 2 : Transfer to MPPL and subsequent transfer to RJK and SJK

a) FEMA

Leg 1: Transfer of equity shares of SRPL and JRPL by GLLC and GILLC respectively to MPPL

- We understand that MPPL is an IOCC.
- A person resident outside India, holding equity instruments of an Indian company may transfer the same to a person resident in India by way of sale or gift and adhere to the pricing guidelines, documentation, and reporting requirements under the NDI Rules.
- The price of equity instruments of an Indian company transferred by a person resident outside India to a person resident in India shall not exceed the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- The sale proceeds (net of taxes) may be remitted abroad.
- Form FC-TRS shall be filed for the transfer of equity instruments between a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India.
 - The onus of reporting shall be on the resident transferee.
 - Form FC-TRS shall be filed within 60 days of the transfer of equity instruments or receipt/ remittance of funds whichever is earlier.

Leg 2 : Transfer of equity shares of SRPL and JRPL by MPPL to RJK and SJK respectively

- A person resident in India holding equity instruments of an Indian company may transfer the same to a person resident outside India by way of sale subject to the adherence to entry routes, sectoral caps, pricing guidelines, and other attendant conditions as applicable and documentation and reporting requirements for such transfers under the NDI Rules.

- The entry routes, sectoral caps, pricing guidelines, and other attendant conditions, however, will not apply in case the transferee is an OCI acquiring such investment on a non-repatriation basis.
- For investment on a non-repatriation basis, the amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account.

b) IT Act

In the hands of GLLC/ GILLC

- Implications captured under para 2.2.3 (b) above in the hands of GLLC/ GILLC to similarly apply.

In the hands of MPPL

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.
- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of MPPL. Such gains, if any, will be taxable at 22%++ (assumed concessional tax regime opted for) given the equity shares will be held for not more than 24 months.
 - Provisions of Section 50CA of the IT Act would not apply where the share transfer is undertaken at or above the Tax FMV.
- TCS Provisions, if applicable, to be complied with.

In the hands of RJK/ SJK

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.

2.3 Are there any FEMA implications if investments are made by JRPL and SRPL in the following modes in Indian companies:

- a) Equity Shares, Compulsorily Convertible Preference Shares ("CCPS") or Compulsorily Convertible Debentures ("CCD")
- b) Optionally Convertible Debentures ("OCD") or Optionally Convertible, Redeemable Preference Shares ("OCPS")
- c) Non-convertible Debentures ("NCD") or Redeemable Preference Shares ("RPS")
- d) Inter-corporate Deposits ("ICD")

2.3.1 It is pertinent to note that the downstream investment regulations apply only to investments made by an Indian entity in the 'capital instruments' of another Indian entity. The term 'capital instruments' has not been defined under the NDI Rules.

2.3.2 Guidance may be taken from the erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("TISPRO"). We wish to highlight that the NDI Rules have superseded TISPRO and the term capital instrument used in TISPRO has been replaced by equity instrument in the NDI Rules.

2.3.3 Given this, capital instruments may be considered to have the same meaning as equity instruments under the NDI Rules. Equity instruments have been defined under the NDI Rules to mean equity shares, convertible debentures, preference shares, and share warrants issued by an Indian company.

2.3.4 'Convertible debentures' means fully and mandatorily convertible debentures while 'preference shares' means fully and mandatorily convertible preference shares. Thus, equity instruments do not include optionally convertible or non-convertible securities such as OCD, OCPS, NCD, and RPS.

2.3.5 Having regard to the above, one can say that investment in optionally/ non-convertible instruments by an FOCC would not require adherence to the NDI Rules. However, on conversion of optionally convertible securities into equity instruments, one has to adhere to downstream investment regulations.

2.3.6 Accordingly, the pricing guidelines would apply at the time of conversion and not at the time of investment in the case of optionally convertible instruments. However, AD Banks may take a view that pricing at the time of investment

should also be considered to determine the floor price.

- 2.3.7 A question may arise as to whether optionally convertible/ non-convertible instruments and ICDs take the colour of External Commercial Borrowings ("ECB") or debt instruments.
- 2.3.8 Such instruments would be out of the purview of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 and Foreign Exchange Management (Guarantees) Regulations, 2000 (collectively "**ECB Regulations**") and Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Debt Instruments Regulations**") as they apply only to investments or lending by a person resident outside India into India. An FOCC being an Indian entity would not be subject to the ECB Regulations and Debt Instruments Regulations.
- 2.3.9 We wish to highlight that the Companies Act, 2013 ("**Companies Act**") provides a framework for acceptance of deposits by companies. As per Section 2(31) of the Companies Act, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI.
- 2.3.10 Any amount received by a company from any other company is carved out from the definition of deposit. Given this, acceptance of loans and deposits by an Indian company from JRPL and SRPL would fall outside the ambit of the aforementioned framework.
- 2.4 **Is it permissible for JRPL and SRPL to invest in Biopolis GV LLP and Inventopolis LLP (collectively "**Development LLPs**") which are engaged in the business of construction-development and earning of lease rentals?**
- 2.4.1 A person resident outside India may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions ie, investment conditions prescribed for certain sectors.
- 2.4.2 Similarly, indirect foreign investment is permitted in an LLP in sectors where foreign investment is allowed up to 100% under the automatic route and there are no FDI linked performance conditions.
- 2.4.3 Construction-development projects include the development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships.

2.4.4 While 100% FDI under the automatic route is permitted for entities undertaking construction-development projects, certain FDI linked performance conditions have been prescribed.

2.4.5 Given the above, indirect foreign investment in the Development LLPs would not be permitted under the automatic route.

2.5 **Is it feasible for SRPL and JRPL to borrow from banks in India against the FCNR (B) deposit of RJK and SJK or by utilizing the standby letter of credit issued by the overseas banker of RJK and SJK?**

2.5.1 We understand that the proposed borrowings are intended to be utilized for the business of SRPL and JRPL as well as for investment in group entities.

2.5.2 Per RBI directions, typically, banks cannot finance the acquisition of equity shares. Given this, borrowings from banks may not be leveraged for investments in other Indian entities.

2.5.3 As per the Foreign Exchange Management (Deposit) Regulations, 2016 ("Deposit Regulations"), AD Banks may grant loans (includes fund based/ non-fund based facilities) to third party resident individuals/ firms/ companies in India against the collateral of fixed deposits held in FCNR (B) account, subject to the following conditions:

- a) The loan should be utilised for personal purposes or for carrying on business activities except for relending or carrying on agricultural/ plantation activities or for investment in real estate business.
- b) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.
- c) The usual norms and considerations as applicable in the case of advances to trade/ industry shall apply to such credit facilities.
- d) The margin requirement shall be notionally calculated on the Rupee equivalent of the deposits.

2.5.4 Given the above, SRPL and JRPL may borrow from banks in India against the FCNR (B) deposit of RJK and SJK for business purposes.

2.5.5 As per the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations (updated as on December 22, 2023), borrowing

and lending in Indian Rupees between two residents does not attract any provisions of FEMA.

2.5.6 In cases where a Rupee facility that is either fund based or non-fund based (such as a letter of credit/ guarantee/ letter of undertaking/ letter of comfort) is guaranteed by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.

2.5.7 The arrangements shall be with the following terms:

- a) The non-resident guarantor may discharge the liability by i) payment out of Rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/ NRE account maintained with an AD Bank in India.
- b) The non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery, he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/ NRE account.
- c) The repayment may be made by credit to the FCNR(B)/ NRE/ NRO account of the guarantor, provided the amount remitted/ credited shall not exceed the Rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
- d) However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- e) General permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.

2.5.8 Based on our discussions with the AD Banks, we understand that while standby letter of credit is not treated as a guarantee, in case the standby letter of credit is drawn, the aforementioned terms will similarly apply.

2.6 Is it permissible for RJK and SJK to borrow from banks/ financial institutions/ private lenders, in India for the purpose of:

- a) Onward lending (unsecured loan) to SRPL and JRPL

- b) Investment in equity shares, CCD or CCPS of SRPL and JRPL
- c) Investment in OCD or OCPS of SRPL and JRPL
- d) Investment in NCD or RPS of SRPL and JRPL

on repatriation or non-repatriation basis.

- 2.6.1 A person resident in India is permitted to lend to a borrower being a person resident outside India under the automatic route only in specific cases under the ECB Regulations.
- 2.6.2 An AD Bank in India may grant a loan in INR to an NRI/ OCI Cardholder for its own business purposes. Such loans may not be used for restricted end uses such as investment in capital markets and real estate activity.
- 2.6.3 Given that AD Banks and persons other than AD Banks are not specifically permitted to lend to borrowers being persons resident outside India under the automatic route for the purposes of relending or investment in India, borrowings by RJK and SJK as envisaged would not be feasible.
- 2.6.4 Please note, AD Banks may grant loans in India to the holders of NRE account/ FCNR(B) deposit against security of funds held in such accounts for the purpose of making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.
- 2.6.5 Repayment of the loan shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local rupee resources in the NRO account of the borrower.
- 2.6.6 However, in any case, investment by RJK and SJK in Indian entities would require adherence to NDI Rules, ECB Regulations and Debt Instruments Regulations, as the case may be.
- 2.7 **Is SRPL or JRPL a Non-banking Financial Company ("NBFC") or a Core Investment Company ("CIC")?**
 - 2.7.1 In terms of the Reserve Bank of India Act, 1934 ("RBI Act") and the rules and clarifications prescribed thereunder, no company shall commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration and complying with related conditions thereto.

2.7.2 An NBFC has been defined to mean:

- a) A financial institution which is a company.
- b) A non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner.
- c) Such other non-banking institution or class of such institutions, as may be notified.

2.7.3 A financial institution means any non-banking institution that carries on as its business or part of its business any of the following activities:

- a) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own.
- b) The acquisition of shares, stocks, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature.
- c) Letting or delivering of any goods to a hirer under a hire-purchase agreement.
- d) The carrying on of any class of insurance business.
- e) Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries, or any business, which is similar thereto.
- f) Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person.

2.7.4 Only companies predominantly engaged in financial activity would be required to be registered with and be regulated by RBI. Hence, if the company is engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, or sale or construction of immovable property as its principal business and financial business constitutes a minor portion of its operations, it will not be regulated by the RBI.

- 2.7.5 As per the press release dated April 8, 1999, to identify whether a particular company is an NBFC, the assets and income pattern as evidenced by the last audited balance sheet date is to be considered to decide its principal business.
- 2.7.6 'Financial activity' is deemed to be the principal business activity if a company satisfies the below mentioned 50-50 test:
- a) Financial assets are more than 50% of its total assets (netted off by intangible assets); **and**
 - b) Income from financial assets should be more than 50% of the gross income.
- 2.7.7 Financial assets include assets that are financial in nature except cash, bank deposits, advance payment of taxes and deferred tax payments.
- 2.7.8 It has been clarified by the RBI that the activity of 'leasing and finance' which is amongst the activities undertaken by NBFC covers only 'financial leases' and not 'operating leases'.
- 2.7.9 Based on a perusal of the audited financials of SRPL and JRPL for the period ended March 31, 2023, it is apparent that the 50-50 test will not be met. This evaluation has to be made on a year on year basis.
- 2.7.10 However, in a scenario where Ramkey Selinium is transferred, given the assets would then substantially comprise of investments in and loans to group entities and the income would majorly comprise of income from such investments and loans, the risk of SRPL and JRPL qualifying as an NBFC cannot be ruled out.
- 2.7.11 CIC means an NBFC carrying on the business of acquisition of shares and securities having total assets of not less than INR 100 crore either individually or in aggregate along with other CIC in the Group and which raises or holds public funds. The following conditions are to be satisfied as on the date of the last audited balance sheet company:
- a) Holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies.
 - b) Investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years

from the date of issue) in group companies constitute not less than 60% of its net assets.

- c) Does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.
- d) It does not carry on any other financial activity.

2.7.12 Given that SRPL and JRPL are not NBFCs, it could be argued that they do not qualify as CICs even if the conditions stipulated therein are satisfied. However, given that RBI has clarified that CICs need not meet the principal business criteria stipulated for NBFCs, one can also argue that if conditions stipulated for CICs are satisfied, CIC registration would have to be obtained.

2.7.13 As of date, in any case, given that the total assets of SRPL and JRPL do not exceed INR 100 crore nor do they satisfy other conditions prescribed, SRPL and JRPL would not be construed as CICs.

3. SCOPE LIMITATION

- 3.1 The content of the note and any views expressed therein are entirely based on information and documentation provided to us. Our conclusions are based on the completeness and accuracy of the stated facts and assumptions. Any inaccuracy could have a material impact on our views or conclusions and should therefore be intimated to us immediately.
- 3.2 The conclusions reached and views expressed in the note are matters of view. Our view is based on our understanding of the India law and regulations prevailing as of the date of this note and our past experience with the tax and/or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.
- 3.3 Legislation, its administrative and judicial interpretation, and the policies of the tax and/or regulatory authorities are subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulation occurring after the date of this note.

- 3.4 Notwithstanding anything to the contrary, this note was prepared exclusively for JRPL and SRPL and is based on the specific facts presented to us by JRPL and SRPL as at the date of this note. The advice is dependent on specific facts and circumstances and may not be appropriate to another party. This note was prepared with only the interests of JRPL and SRPL in mind and was not planned or carried out in the contemplation of any use by any other party.
- 3.5 Aeka Advisors, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) howsoever arising, and shall not be liable for any claim whatsoever in respect of any loss, damage or expense of whatever nature which is caused to or suffered by any other party.
- 3.6 This note or any portion thereof may not be distributed or otherwise made available to anyone else without our prior written consent. In various sections of this document, for ease of understanding and as a stylistic matter, terms such as "is" or "will" or "should" may be used. Such language should not be construed to alter the "Conclusions" section of this document.
- 3.7 This advice is not intended or written to be used, and it cannot be used, for the purpose of avoiding any taxes and applicable penalties. The content of this note is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter.



Greens Group

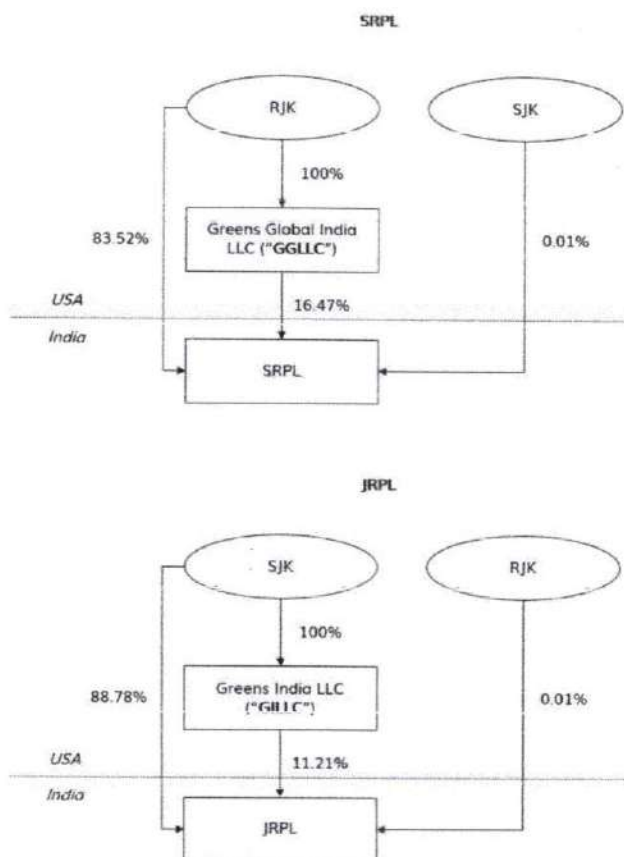
Feasibility Study

February 13, 2024

Draft for discussion

1. OUR UNDERSTANDING OF THE FACTS

- 1.1 Rajesh Kumar Jayantilal Kadakia ("RJK") and Sharad Kumar Jayantilal Kadakia ("SJK") are Overseas Citizens of India ("OCIs") and hold citizenship in the United States of America. We understand that RJK and SJK were persons resident outside India for India tax and regulatory purposes at the time of investments and continue/ will continue to be so for the Financial Year ("FY") 2023-24 and onwards.
- 1.2 SDNMKJ Realty Private Limited ("SRPL") and JMK GEC Realtors Private Limited ("JRPL") are private companies incorporated in India and engaged in the business of construction, development, and leasing of real estate properties.
- 1.3 The assets of SRPL and JRPL comprise substantially of investment in the immovable property being Ramkey Selinium, a corporate premises in Hyderabad, from which lease rentals are earned. JRPL and SRPL have invested in and advanced loans to other Indian entities.
- 1.4 The shareholding pattern, as of date, of SRPL and JRPL is as depicted below:



- 1.5 The investment of RJK and SJK in SRPL and JRPL was undertaken on a non-repatriation basis and out of income earned/ funds inherited in India. In contrast, investment by GGLLC in SRPL and GILLC in JRPL was undertaken on a repatriation basis.
- 1.6 Investments in SRPL and JRPL are held by its shareholders as capital assets and not as stock-in-trade.
- 1.7 The directors of SRPL and JRPL, as of date, are listed below:

Director	Citizenship	Residential Status for India tax and regulatory purposes
RJK	USA	Person resident outside India
SJK	USA	
Soham Modi	India	Resident
Tejal Modi	India	

- 1.8 The management of Greens Group has approached Aeka Advisors India LLP to evaluate the feasibility of certain transactions and provide clarifications from an India regulatory perspective.

2. QUERIES

- 2.1 **Are investments by SRPL and JRPL in other Indian companies and Limited Liability Partnerships ("LLPs") subject to the downstream investment rules under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("NDI Rules")?**

- 2.1.1 An Indian entity (ie, an Indian company or an LLP) that has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines, and other attendant conditions as applicable to Foreign Direct Investment ("FDI").

- 2.1.2 Indirect foreign investment means downstream investment ie, investment in the capital instruments or the capital, as the case may be, in an Indian entity by another Indian entity which:

- has received total foreign investment (includes indirect foreign investment); and
- is not owned and not controlled by resident Indian citizens or is owned

or controlled by persons resident outside India – commonly referred to as a Foreign Owned and/ or Controlled Company ("**FOCC**").

2.1.3 An Indian company that is owned and controlled by resident Indian citizens or that is carved out from the applicability of the downstream investment regulations is commonly referred to as an Indian Owned and Controlled Company ("**IOCC**").

2.1.4 The NDI Rules prescribe what determines 'ownership' and 'control' to ascertain whether an Indian company is an FOCC or IOCC.

2.1.5 'Ownership' of an Indian company refers to the beneficial holding of more than 50% of the equity instruments of such company. A company is said to be owned by resident Indian citizens if the ownership of the Indian company is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

2.1.6 It is pertinent to note that the following persons may purchase equity instruments issued by a company on a non-repatriation basis – such investment shall be deemed to be domestic investment at par with the investment made by residents:

- a) A Non-resident Indian ("**NRI**") ie, an individual resident outside India who is a citizen of India.
- b) An OCI ie, an individual resident outside India who holds an OCI card.
- c) A company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs ("**Foreign Entities**").

2.1.7 It has been clarified under the NDI Rules that investments made by Indian entities which are owned and controlled by NRIs, on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.

2.1.8 Though the investments made by OCIs or Foreign Entities on a non-repatriation basis are considered on par with resident investments and are treated like domestic investments, the investments made by Indian entities owned and/ or controlled by such OCIs or Foreign Entities on a non-repatriation basis have no specific carve-out. There is no clarity as to whether such investments attract reporting and compliance requirements concerning downstream investments.

- 2.1.9 As per the Master Directions – Foreign Investment in India (updated up to March 17, 2022) [**"NDI MD"**], the underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". NRI investments on a non-repatriation basis are treated as deemed domestic investments. Accordingly, an investment made by an Indian entity that is owned and controlled by NRIs, wherein the investment by such NRIs is made on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.10 While it could be argued that similar reasoning may also be applied to investments made by an Indian entity owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, the following points are worth noting:
- a) The specific use of the phrase 'Indian citizens' while describing IOCCs.
 - b) Carve out only to Indian entities that are owned and controlled by NRIs.
- 2.1.11 Per the correspondences received from the Reserve Bank of India ("**RBI**") on August 31, 2023, investments by SRPL and JRPL in Indian companies were concluded not to be indirect foreign investments by citing the above provision under the NDI MD. We understand that the fact that RJK and SJK are OCI cardholders was highlighted in communications to RBI. However, this fact was not deliberated upon by the RBI.
- 2.1.12 Moreover, based on discussions with Authorised Dealer Banks ("**AD Banks**") and in the absence of specific exclusions, we understand that investment by Indian companies that are owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, will be construed to be indirect foreign investments.
- 2.1.13 We shall now proceed with the evaluation of who controls SRPL and JRPL.
- 2.1.14 'Control' in a company means the right to appoint the majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement. A company is said to be controlled by resident Indian citizens when the control is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

- 2.1.15 The above definition has broad contours and is dependent on the facts and circumstances of each case. What is to be evaluated is the factum of control either over the management or over policy making.
- 2.1.16 We have been given to understand that by virtue of their shareholding and directorship, RJK has control over SRPL while SJK has control over JRPL. Control is not held by any other person either by way of statute or agreement.
- 2.1.17 Given the above, a view could be taken that SRPL and JRPL are owned and controlled by persons resident outside India and investments made by such entities in other Indian entities qualify as indirect foreign investments.
- 2.1.18 As of date, SRPL and JRPL have invested in equity instruments of Indian companies and in the capital of a partnership firm. Please note that downstream investment by an FOCC in a partnership firm is not permitted.
- 2.1.19 Please note that in case of indirect foreign investments, the following compliances are to be undertaken:
- a) Downstream investment shall have the approval of the board of directors as also a shareholders' agreement, if any.
 - b) Only funds received from abroad or internal accruals ie, profits transferred to reserve account after payment of taxes, are permitted to be used for making a downstream investment. Funds borrowed in the domestic markets cannot be used.
 - c) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of the NDI Rules for the downstream investment made by it at the second level and so on and so forth.
 - d) A certificate to this effect is to be obtained from its statutory auditor on an annual basis and compliance with the NDI Rules shall be mentioned in the director's report in the annual report.
 - e) The Secretariat for Industrial Assistance, DPIIT is to be notified within 30 days of making the downstream investment.
 - f) The Indian entity making the downstream investment has to file Form DI with the RBI within 30 days of allotment of the equity instruments.

- g) Pricing guidelines to be adhered to. The price of equity instruments **shall not be less than** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- h) When a company that does not have any operations makes indirect foreign investment or commences business, it will have to comply with the relevant sectoral conditions on entry routes, conditionalities, and caps.

2.2 **Would it be required to re-align the shareholding of SRPL and JRPL such that SRPL is wholly owned by RJK and JRPL is wholly owned by SJK for JRPL and SRPL to be construed as IOCC?**

- a) If yes, what are the options that could be evaluated for the re-alignment of shareholding of SRPL and JRPL?
- b) If re-alignment of shareholding of SRPL and JRPL is not necessary, can the shareholding of GGLLC in SRPL and of GILLC in JRPL be increased up to 49%?
- c) Is it permissible for equity shares of SRPL to be transferred by GGLLC to RJK and for equity shares of JRPL to be transferred by GILLC to SJK? What are the key implications under the Foreign Exchange Management Act, 1999 ("FEMA") and Income-tax Act, 1961 ("IT Act")?
- d) What are the key implications under FEMA and the IT Act on transfer of equity shares of SRPL and JRPL to Modi Properties Private Limited ("MPPL") and the subsequent transfer of such shares by MPPL to RJK and SJK?

2.2.1 Given that SRPL and JRPL qualify as FOCCs on account of RJK's and SJK's holdings in SRPL and JRPL respectively, re-alignment of shareholding as envisaged would not be particularly beneficial.

2.2.2 Nonetheless, the key implications from an IT Act and FEMA perspective for the scenarios envisaged by the management for the re-alignment of shareholding of JRPL and SRPL have been captured below.

2.2.3 Scenario 1 : Direct transfer to RJK and SJK

a) FEMA

- A person resident outside India, not being an NRI or OCI, may transfer by way of sale or gift the equity instruments of an Indian company held by him to any person resident outside India. Given this, equity shares of SRPL held by GGLLC may be transferred to RJK and equity shares of JRPL held by GILLC may be transferred to SJK.
- Given that the equity shares of SRPL and JRPL are held by GGLLC and GILLC respectively on a repatriation basis, on transfer, such shares would automatically be held by RJK and SJK on a repatriation basis.
- Please note that the pricing guidelines and reporting requirements under the NDI Rules do not apply to the transfer of equity instruments between persons resident outside India. Further, there are no specifications on modes of payment.

b) IT Act

In the hands of GGLLC/ GILLC

- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of GGLLC and GILLC respectively. Such gains, if any, will be taxable at 10%++ if the equity shares are held for more than 24 months, or else at 40%++.
 - As per Section 50CA of the IT Act, where the consideration received on transfer of equity shares (other than quoted shares) is less than its tax fair market value ("Tax FMV"), such Tax FMV shall be deemed to be the full value of consideration for the purpose of computing capital gains and tax thereon, if any.
 - Tax FMV for Section 50CA of the IT Act shall be determined in accordance with Rule 11UA of the Income-tax Rules, 1962 ("IT Rules") – akin to net book value.
- As per Section 206C(1H) of the IT Act, every seller must collect tax at source from the buyer, on the sale of goods (includes unlisted shares), at the rate of 0.10% of the sale consideration exceeding INR 50 lakhs in an FY ["TCS Provisions"].

- The TCS Provisions are applicable where the total sales, gross receipts or turnover from the business of the seller exceeds INR 10 crores in the FY immediately preceding the FY in which the goods are sold.
- However, the aforesaid provisions would not apply if (i) the goods are exported out of India or (ii) the buyer is liable to withhold tax and has withheld such taxes.
- We have been informed that the total sales, gross receipts or turnover from the business of GLLC and GILLC have not exceeded INR 10 crores in FY 2022-23, and hence, neither does GLLC nor GILLC qualify as a 'seller' to invoke the TCS Provisions.

In the hands of RJK/ SJK

- As per Section 56(2)(x) of the IT Act [**"Recipient Tax"**], where a person receives any property (includes shares) from another person for a consideration which is less than its Tax FMV, the excess of the Tax FMV over the consideration paid (where it exceeds INR 50,000) would be subject to tax in the hands of the recipient under the head 'Income from other sources' upto 30%++.
- We understand that the transfer, if undertaken, will be carried out at or above the Tax FMV and accordingly, Recipient Tax shall not apply.
- Tax FMV for the purposes of Section 56(2)(x) of the IT Act shall be determined in accordance with Rule 11UA of the IT Rules – akin to net book value.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.

2.2.4 Scenario 2 : Transfer to MPPL and subsequent transfer to RJK and SJK

a) FEMA

Leg 1: Transfer of equity shares of SRPL and JRPL by GGLLC and GILLC respectively to MPPL

- We understand that MPPL is an IOCC.
- A person resident outside India, holding equity instruments of an Indian company may transfer the same to a person resident in India by way of sale or gift and adhere to the pricing guidelines, documentation, and reporting requirements under the NDI Rules.
- The price of equity instruments of an Indian company transferred by a person resident outside India to a person resident in India **shall not exceed** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- The sale proceeds (net of taxes) may be remitted abroad.
- Form FC-TRS shall be filed for the transfer of equity instruments between a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India.
 - The onus of reporting shall be on the resident transferee.
 - Form FC-TRS shall be filed within 60 days of the transfer of equity instruments or receipt/ remittance of funds whichever is earlier.

Leg 2 : Transfer of equity shares of SRPL and JRPL by MPPL to RJK and SJK respectively

- A person resident in India holding equity instruments of an Indian company may transfer the same to a person resident outside India by way of sale subject to the adherence to entry routes, sectoral caps, pricing guidelines, and other attendant conditions as applicable and documentation and reporting requirements for such transfers under the NDI Rules.

- The entry routes, sectoral caps, pricing guidelines, and other attendant conditions, however, will not apply in case the transferee is an OCI acquiring such investment on a non-repatriation basis.
- For investment on a non-repatriation basis, the amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account.

b) IT Act

In the hands of GGLLC/ GILLC

- Implications captured under para 2.2.3 (b) above in the hands of GGLLC/ GILLC to similarly apply.

In the hands of MPPL

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.
- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of MPPL. Such gains, if any, will be taxable at 22%++ (assumed concessional tax regime opted for) given the equity shares will be held for not more than 24 months.
 - Provisions of Section 50CA of the IT Act would not apply where the share transfer is undertaken at or above the Tax FMV.

- TCS Provisions, if applicable, to be complied with.

In the hands of RJK/ SJK

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.

2.3 Are there any FEMA implications if investments are made by JRPL and SRPL in the following modes in Indian companies:

- a) Equity Shares, Compulsorily Convertible Preference Shares ("CCPS") or Compulsorily Convertible Debentures ("CCD")
- b) Optionally Convertible Debentures ("OCD") or Optionally Convertible, Redeemable Preference Shares ("OCPS")
- c) Non-convertible Debentures ("NCD") or Redeemable Preference Shares ("RPS")
- d) Inter-corporate Deposits ("ICD")

2.3.1 It is pertinent to note that the downstream investment regulations apply only to investments made by an Indian entity in the 'capital instruments' of another Indian entity. The term 'capital instruments' has not been defined under the NDI Rules.

2.3.2 Guidance may be taken from the erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("TISPRO"). We wish to highlight that the NDI Rules have superseded TISPRO and the term capital instrument used in TISPRO has been replaced by equity instrument in the NDI Rules.

2.3.3 Given this, capital instruments may be considered to have the same meaning as equity instruments under the NDI Rules. Equity instruments have been defined under the NDI Rules to mean equity shares, convertible debentures, preference shares, and share warrants issued by an Indian company.

2.3.4 'Convertible debentures' means fully and mandatorily convertible debentures while 'preference shares' means fully and mandatorily convertible preference shares. Thus, equity instruments do not include optionally convertible or non-convertible securities such as OCD, OCPS, NCD, and RPS.

2.3.5 Having regard to the above, one can say that investment in optionally/ non-convertible instruments by an FOCC would not require adherence to the NDI Rules. However, on conversion of optionally convertible securities into equity instruments, one has to adhere to downstream investment regulations.

2.3.6 Accordingly, the pricing guidelines would apply at the time of conversion and not at the time of investment in the case of optionally convertible instruments. However, AD Banks may take a view that pricing at the time of investment

should also be considered to determine the floor price.

- 2.3.7 A question may arise as to whether optionally convertible/ non-convertible instruments and ICDs take the colour of External Commercial Borrowings ("**ECB**") or debt instruments.
- 2.3.8 Such instruments would be out of the purview of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 and Foreign Exchange Management (Guarantees) Regulations, 2000 (collectively "**ECB Regulations**") and Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Debt Instruments Regulations**") as they apply only to investments or lending by a person resident outside India into India. An FOCC being an Indian entity would not be subject to the ECB Regulations and Debt Instruments Regulations.
- 2.3.9 We wish to highlight that the Companies Act, 2013 ("**Companies Act**") provides a framework for acceptance of deposits by companies. As per Section 2(31) of the Companies Act, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI.
- 2.3.10 Any amount received by a company from any other company is carved out from the definition of deposit. Given this, acceptance of loans and deposits by an Indian company from JRPL and SRPL would fall outside the ambit of the aforementioned framework.
- 2.4 **Is it permissible for JRPL and SRPL to invest in Biopolis GV LLP and Inventopolis LLP (collectively "Development LLPs") which are engaged in the business of construction-development and earning of lease rentals?**
- 2.4.1 A person resident outside India may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions ie, investment conditions prescribed for certain sectors.
- 2.4.2 Similarly, indirect foreign investment is permitted in an LLP in sectors where foreign investment is allowed up to 100% under the automatic route and there are no FDI linked performance conditions.
- 2.4.3 Construction-development projects include the development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships.

- 2.4.4 While 100% FDI under the automatic route is permitted for entities undertaking construction-development projects, certain FDI linked performance conditions have been prescribed.
- 2.4.5 Given the above, indirect foreign investment in the Development LLPs would not be permitted under the automatic route.
- 2.5 **Is it feasible for SRPL and JRPL to borrow from banks in India against the FCNR (B) deposit of RJK and SJK or by utilizing the standby letter of credit issued by the overseas banker of RJK and SJK?**
- 2.5.1 We understand that the proposed borrowings are intended to be utilized for the business of SRPL and JRPL as well as for investment in group entities.
- 2.5.2 Per RBI directions, typically, banks cannot finance the acquisition of equity shares. Given this, borrowings from banks may not be leveraged for investments in other Indian entities.
- 2.5.3 As per the Foreign Exchange Management (Deposit) Regulations, 2016 ("**Deposit Regulations**"), AD Banks may grant loans (includes fund based/ non-fund based facilities) to third party resident individuals/ firms/ companies in India against the collateral of fixed deposits held in FCNR (B) account, subject to the following conditions:
- a) The loan should be utilised for personal purposes or for carrying on business activities except for relending or carrying on agricultural/ plantation activities or for investment in real estate business.
 - b) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.
 - c) The usual norms and considerations as applicable in the case of advances to trade/ industry shall apply to such credit facilities.
 - d) The margin requirement shall be notionally calculated on the Rupee equivalent of the deposits.
- 2.5.4 Given the above, SRPL and JRPL may borrow from banks in India against the FCNR (B) deposit of RJK and SJK for business purposes.
- 2.5.5 As per the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations (updated as on December 22, 2023), borrowing

and lending in Indian Rupees between two residents does not attract any provisions of FEMA.

2.5.6 In cases where a Rupee facility that is either fund based or non-fund based (such as a letter of credit/ guarantee/ letter of undertaking/ letter of comfort) is guaranteed by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.

2.5.7 The arrangements shall be with the following terms:

- a) The non-resident guarantor may discharge the liability by i) payment out of Rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/ NRE account maintained with an AD Bank in India.
- b) The non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery, he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/ NRE account.
- c) The repayment may be made by credit to the FCNR(B)/ NRE/ NRO account of the guarantor, provided the amount remitted/ credited shall not exceed the Rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
- d) However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- e) General permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.

2.5.8 Based on our discussions with the AD Banks, we understand that while standby letter of credit is not treated as a guarantee, in case the standby letter of credit is drawn, the aforementioned terms will similarly apply.

2.6 Is it permissible for RJK and SJK to borrow from banks/ financial institutions/ private lenders, in India for the purpose of:

- a) Onward lending (unsecured loan) to SRPL and JRPL

b) Investment in equity shares, CCD or CCPS of SRPL and JRPL

c) Investment in OCD or OCPS of SRPL and JRPL

d) Investment in NCD or RPS of SRPL and JRPL

on repatriation or non-repatriation basis.

2.6.1 A person resident in India is permitted to lend to a borrower being a person resident outside India under the automatic route only in specific cases under the ECB Regulations.

2.6.2 An AD Bank in India may grant a loan in INR to an NRI/ OCI Cardholder for its own business purposes. Such loans may not be used for restricted end uses such as investment in capital markets and real estate activity.

2.6.3 Given that AD Banks and persons other than AD Banks are not specifically permitted to lend to borrowers being persons resident outside India under the automatic route for the purposes of relending or investment in India, borrowings by RJK and SJK as envisaged would not be feasible.

2.6.4 Please note, AD Banks may grant loans in India to the holders of NRE account/ FCNR(B) deposit against security of funds held in such accounts for the purpose of making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.

2.6.5 Repayment of the loan shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local rupee resources in the NRO account of the borrower.

2.6.6 However, in any case, investment by RJK and SJK in Indian entities would require adherence to NDI Rules, ECB Regulations and Debt Instruments Regulations, as the case may be.

2.7 Is SRPL or JRPL a Non-banking Financial Company ("NBFC") or a Core Investment Company ("CIC")?

2.7.1 In terms of the Reserve Bank of India Act, 1934 ("RBI Act") and the rules and clarifications prescribed thereunder, no company shall commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration and complying with related conditions thereto.

2.7.2 An NBFC has been defined to mean:

- a) A financial institution which is a company.
- b) A non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner.
- c) Such other non-banking institution or class of such institutions, as may be notified.

2.7.3 A financial institution means any non-banking institution that carries on as its business or part of its business any of the following activities:

- a) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own.
- b) The acquisition of shares, stocks, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature.
- c) Letting or delivering of any goods to a hirer under a hire-purchase agreement.
- d) The carrying on of any class of insurance business.
- e) Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries, or any business, which is similar thereto.
- f) Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person.

2.7.4 Only companies predominantly engaged in financial activity would be required to be registered with and be regulated by RBI. Hence, if the company is engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, or sale or construction of immovable property as its principal business and financial business constitutes a minor portion of its operations, it will not be regulated by the RBI.

- 2.7.5 As per the press release dated April 8, 1999, to identify whether a particular company is an NBFC, the assets and income pattern as evidenced by the last audited balance sheet date is to be considered to decide its principal business.
- 2.7.6 'Financial activity' is deemed to be the principal business activity if a company satisfies the below mentioned 50-50 test:
- a) Financial assets are more than 50% of its total assets (netted off by intangible assets); **and**
 - b) Income from financial assets should be more than 50% of the gross income.
- 2.7.7 Financial assets include assets that are financial in nature except cash, bank deposits, advance payment of taxes and deferred tax payments.
- 2.7.8 It has been clarified by the RBI that the activity of 'leasing and finance' which is amongst the activities undertaken by NBFC covers only 'financial leases' and not 'operating leases'.
- 2.7.9 Based on a perusal of the audited financials of SRPL and JRPL for the period ended March 31, 2023, it is apparent that the 50-50 test will not be met. This evaluation has to be made on a year on year basis.
- 2.7.10 However, in a scenario where Ramkey Selineum is transferred, given the assets would then substantially comprise of investments in and loans to group entities and the income would majorly comprise of income from such investments and loans, the risk of SRPL and JRPL qualifying as an NBFC cannot be ruled out.
- 2.7.11 CIC means an NBFC carrying on the business of acquisition of shares and securities having total assets of not less than INR 100 crore either individually or in aggregate along with other CIC in the Group and which raises or holds public funds. The following conditions are to be satisfied as on the date of the last audited balance sheet company:
- a) Holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies.
 - b) Investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years

from the date of issue) in group companies constitute not less than 60% of its net assets.

- c) Does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.
- d) It does not carry on any other financial activity.

2.7.12 Given that SRPL and JRPL are not NBFCs, it could be argued that they do not qualify as CICs even if the conditions stipulated therein are satisfied. However, given that RBI has clarified that CICs need not meet the principal business criteria stipulated for NBFCs, one can also argue that if conditions stipulated for CICs are satisfied, CIC registration would have to be obtained.

2.7.13 As of date, in any case, given that the total assets of SRPL and JRPL do not exceed INR 100 crore nor do they satisfy other conditions prescribed, SRPL and JRPL would not be construed as CICs.

3. SCOPE LIMITATION

3.1 The content of the note and any views expressed therein are entirely based on information and documentation provided to us. Our conclusions are based on the completeness and accuracy of the stated facts and assumptions. Any inaccuracy could have a material impact on our views or conclusions and should therefore be intimated to us immediately.

3.2 The conclusions reached and views expressed in the note are matters of view. Our view is based on our understanding of the India law and regulations prevailing as of the date of this note and our past experience with the tax and/or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.

3.3 Legislation, its administrative and judicial interpretation, and the policies of the tax and/or regulatory authorities are subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulation occurring after the date of this note.

- 3.4 Notwithstanding anything to the contrary, this note was prepared exclusively for JRPL and SRPL and is based on the specific facts presented to us by JRPL and SRPL as at the date of this note. The advice is dependent on specific facts and circumstances and may not be appropriate to another party. This note was prepared with only the interests of JRPL and SRPL in mind and was not planned or carried out in the contemplation of any use by any other party.
- 3.5 Aeka Advisors, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) howsoever arising, and shall not be liable for any claim whatsoever in respect of any loss, damage or expense of whatever nature which is caused to or suffered by any other party.
- 3.6 This note or any portion thereof may not be distributed or otherwise made available to anyone else without our prior written consent. In various sections of this document, for ease of understanding and as a stylistic matter, terms such as "is" or "will" or "should" may be used. Such language should not be construed to alter the "Conclusions" section of this document.
- 3.7 This advice is not intended or written to be used, and it cannot be used, for the purpose of avoiding any taxes and applicable penalties. The content of this note is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter.

RE: JRPL & SRPL - Change of Name

From: Sharad Kadakia <sharad.kadakia@greens.com>
To: Soham Modi <sohammodi@modiproperties.com>

We should think of directors and need to close cross .01 shareholding also. I think we should think this process through.

Sharad Kadakia
Greens | Founding Principal
16530 Bake Parkway, Suite 200, Irvine, CA 92618
M: (949) 283-7645 | sharad.kadakia@greens.com

From: Sharad Kadakia <sharad.kadakia@greens.com>
Sent: Wednesday, March 6, 2024 6:53 PM
To: Soham Modi <sohammodi@modiproperties.com>; rishabh.arora . <rishabh.arora@modiproperties.com>
Cc: nirisha . <nirisha@modiproperties.com>
Subject: RE: JRPL & SRPL - Change of Name

Haritah Group Pvt Ltd Is good for JMKGEC.

Veridis Global Pvt Ltd. Is good for SDNMKJ.

Sharad Kadakia
Greens | Founding Principal
16530 Bake Parkway, Suite 200, Irvine, CA 92618
M: (949) 283-7645 | sharad.kadakia@greens.com

From: Soham Modi <sohammodi@modiproperties.com>
Sent: Wednesday, March 6, 2024 6:46 PM
To: rishabh.arora . <rishabh.arora@modiproperties.com>
Cc: nirisha . <nirisha@modiproperties.com>; Sharad Kadakia <sharad.kadakia@greens.com>
Subject: Re: JRPL & SRPL - Change of Name

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RBI/FED/2017-18/60

FED Master Direction No.11/2017-18

January 4, 2018

(Updated up to March 17, 2022)

(Updated up to March 08, 2019)

(Updated up to December 19, 2018)

(Updated as on April 06, 2018)

(Updated as on January 12, 2018)

To,

All Authorised Dealer Category – I banks
and Authorised banks

Madam / Sir,

Master Direction – Foreign Investment in India

Foreign Investment in India is regulated in terms of sub-section 2A of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with [Foreign Exchange Management \(Non-Debt Instruments\) Rules, 2019](#) (NDI Rules) issued vide Gazette Notification No. S.O. 3732(E) dated October 17, 2019. These rules are amended from time to time to incorporate the changes in the regulatory framework and published through gazette notifications.

2. Rule 2(A) of NDI Rules empowers the Reserve Bank of India (RBI) to administer it, and while administering these rules, the RBI may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.
3. RBI, therefore, issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. This Master Direction lays down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/ constituents with a view to implementing the rules framed.
4. Instructions issued on Foreign Investment in India and its related aspects under the FEMA have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in [Annex 11](#).

8.7 Share warrants

8.7.1 In case of share warrants, their pricing and the price/ conversion formula shall be determined upfront.

8.7.2 The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants.

8.8 Investment in an LLP

Investment in an LLP either by way of capital contribution or by way of acquisition/ transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted/ adopted as per market practice (hereinafter referred to as "fair price of capital contribution/ profit share of an LLP") and a valuation certificate to that effect should be issued by a Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

8.9 Transfer of capital contribution/ profit share of an LLP

8.9.1 In case of transfer of capital contribution/ profit share of an LLP from a person resident in India to a person resident outside India, the transfer should be for a consideration not less than the fair price of capital contribution/ profit share of an LLP.

8.9.2 In case of transfer of capital contribution/ profit share of an LLP from a person resident outside India to a person resident in India, the transfer should be for a consideration which is not more than the fair price of the capital contribution/ profit share of an LLP.

8.10 Non-applicability of pricing guidelines

8.10.1 The pricing guidelines will not apply for investment in equity instruments by a person resident outside India on non-repatriation basis.

8.10.2 The pricing guidelines will not be applicable for any transfer by way of sale done in accordance with SEBI regulations where the pricing is prescribed by SEBI. A Chartered Accountant's Certificate to the effect that relevant SEBI regulations/ guidelines have been complied with has to be attached to the form FC-TRS filed with the AD bank.

8.10.3 The valuation certificate issued by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant must not be more than ninety days old as on the date of the transfer.

9. Downstream Investment

The underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". Accordingly, downstream investments which are treated as indirect foreign investment are subject to the entry



Greens Group

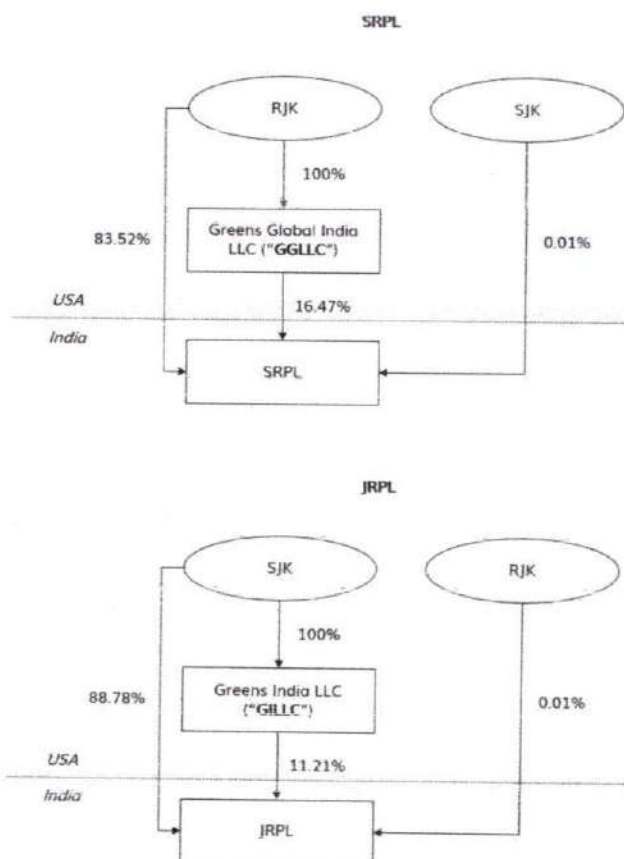
Feasibility Study

March 6, 2024

Draft for discussion

1. OUR UNDERSTANDING OF THE FACTS

- 1.1 Rajesh Kumar Jayantilal Kadakia ("RJK") and Sharad Kumar Jayantilal Kadakia ("SJK") are Overseas Citizens of India ("OCIs") and hold citizenship in the United States of America. We understand that RJK and SJK were persons resident outside India for India tax and regulatory purposes at the time of investments and continue/ will continue to be so for the Financial Year ("FY") 2023-24 and onwards.
- 1.2 SDNMKJ Realty Private Limited ("SRPL") and JMK GEC Realtors Private Limited ("JRPL") are private companies incorporated in India and are engaged in the business of construction, development, and leasing of real estate properties.
- 1.3 The assets of SRPL and JRPL comprise substantially of investment in the immovable property being Ramkey Selinium, a corporate premises in Hyderabad, from which lease rentals are earned. JRPL and SRPL have invested in and advanced loans to other Indian entities as well.
- 1.4 The shareholding pattern, as of date, of SRPL and JRPL is as depicted below:



- 1.5 The investment of RJK and SJK in SRPL and JRPL was undertaken on a non-repatriation basis and out of income earned/ funds inherited in India. In contrast, investment by GGLLC in SRPL and GILLC in JRPL was undertaken on a repatriation basis.
- 1.6 Investments in SRPL and JRPL are held by its shareholders as capital assets and not as stock-in-trade.
- 1.7 The directors of SRPL and JRPL, as of date, are listed below:

Director	Citizenship	Residential Status for India tax and regulatory purposes
RJK	USA	Person resident outside India
SJK	USA	
Soham Modi	India	Resident
Tejal Modi	India	

- 1.8 The management of Greens Group has approached Aeka Advisors India LLP to evaluate the feasibility of certain transactions and provide clarifications from an India regulatory perspective.

2. QUERIES

- 2.1 Are investments by SRPL and JRPL in other Indian companies and Limited Liability Partnerships ("LLPs") subject to the downstream investment rules under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("NDI Rules")?

- 2.1.1 An Indian entity (ie, a company or an LLP) that has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines, and other attendant conditions as applicable to Foreign Direct Investment ("FDI").

- 2.1.2 Indirect foreign investment means downstream investment ie, investment in the capital instruments or the capital, as the case may be, in an Indian entity by another Indian entity which:

- has total foreign investment (includes indirect foreign investment); and
- is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India – commonly referred to

as a Foreign Owned and/ or Controlled Company ("**FOCC**").

- 2.1.3 An Indian company that is not an FOCC is commonly referred to as an Indian Owned and Controlled Company ("**IOCC**").
- 2.1.4 The NDI Rules prescribe what determines 'ownership' and 'control' to ascertain whether an Indian company is an FOCC or IOCC.
- 2.1.5 'Ownership' of an Indian company refers to the beneficial holding of more than 50% of the equity instruments of such company. A company is said to be owned by resident Indian citizens if the ownership of the Indian company is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.
- 2.1.6 It is pertinent to note that the following persons may purchase equity instruments issued by a company on a non-repatriation basis – such investment shall be deemed to be domestic investment at par with the investment made by residents:
- a) A Non-resident Indian ("**NRI**") ie, an individual resident outside India who is a citizen of India.
 - b) An OCI ie, an individual resident outside India who holds an OCI card.
 - c) A company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs ("**Foreign Entities**").
- 2.1.7 It has been clarified under the NDI Rules that investments made by Indian entities which are owned and controlled by NRIs, on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.
- 2.1.8 Though the investments made by OCIs or Foreign Entities on a non-repatriation basis are considered on par with resident investments and are treated like domestic investments, the downstream investments made by Indian entities owned and/ or controlled by such OCIs or Foreign Entities on a non-repatriation basis have no specific carve-out. There is no clarity as to whether such investments attract reporting and compliance requirements concerning downstream investments.

2.1.9 As per the Master Directions – Foreign Investment in India (updated up to March 17, 2022) ["**NDI MD**"], the underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". NRI investments on a non-repatriation basis are treated as deemed domestic investments. Accordingly, an investment made by an Indian entity that is owned and controlled by NRIs, wherein the investment by such NRIs is made on a non-repatriation basis, shall not be considered for the calculation of indirect foreign investment.

2.1.10 While it could be argued that similar reasoning may also be applied to investments made by an Indian entity owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, the following points are worth noting:

- a) The specific use of the phrase 'Indian citizens' while describing IOCCs.
- b) Carve out only to Indian entities that are owned and controlled by NRIs.

2.1.11 Per the correspondence received from the Reserve Bank of India ("**RBI**") on August 31, 2023, investments by SRPL and JRPL in Indian companies were concluded not to be indirect foreign investments by citing the above provision under the NDI MD. We understand that the fact that RJK and SJK are OCI cardholders was highlighted in communications to RBI. However, this fact was not deliberated upon by the RBI.

2.1.12 Moreover, based on discussions with Authorised Dealer Banks ("**AD Banks**") and in the absence of specific exclusions, we understand that Indian companies that are owned and controlled by OCIs, wherein the investment by such OCIs is made on a non-repatriation basis, will be construed to be **FOCCs**.

Investment

Indirect Foreign Investment

2.1.13 We shall now proceed with the evaluation of who controls SRPL and JRPL.

2.1.14 'Control' in a company means the right to appoint the majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement. A company is said to be controlled by resident Indian citizens when the control is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

MC NIKIMA

- 2.1.15 The above definition has broad contours and is dependent on the facts and circumstances of each case. What is to be evaluated is the factum of control either over the management or over policy making.
- 2.1.16 We have been given to understand that by virtue of their shareholding and directorship, RJK has control over SRPL while SJK has control over JRPL. Control is not held by any other person either by way of statute or agreement.
- 2.1.17 Given the above, a view could be taken that SRPL and JRPL are owned and controlled by persons resident outside India. Given that SRPL and JRPL have received FDI and are owned and controlled by persons resident outside India, investments made by such entities in other Indian entities qualify as indirect foreign investments.
- 2.1.18 As of date, SRPL and JRPL have invested in equity instruments of Indian companies and in the capital of a partnership firm. Please note that downstream investment by an FOCC in a partnership firm is not permitted.
- 2.1.19 Please note that in case of indirect foreign investments, the following compliances are to be undertaken:
- a) Downstream investment shall have the approval of the board of directors as also a shareholders' agreement, if any.
 - b) Only funds received from abroad or internal accruals ie, profits transferred to reserve account after payment of taxes, are permitted to be used for making a downstream investment. Funds borrowed in the domestic markets cannot be used.
 - c) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of the NDI Rules for the downstream investment made by it at the second level and so on and so forth.
 - d) A certificate to this effect is to be obtained from its statutory auditor on an annual basis and compliance with the NDI Rules shall be mentioned in the director's report in the annual report.
 - e) The Secretariat for Industrial Assistance, DPIIT is to be notified within 30 days of making the downstream investment.
 - f) The Indian entity making the downstream investment has to file Form DI

with the RBI within 30 days of allotment of the equity instruments.

- g) Pricing guidelines to be adhered to. The price of equity instruments **shall not be less than** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- h) When a company that does not have any operations makes indirect foreign investment or commences business, it will have to comply with the relevant sectoral conditions on entry routes, conditionalities, and caps.

2.2 **Would it be required to re-align the shareholding of SRPL and JRPL such that SRPL is wholly owned by RJK and JRPL is wholly owned by SJK for JRPL and SRPL to be construed as IOCC?**

- a) If yes, what are the options that could be evaluated for the re-alignment of shareholding of SRPL and JRPL?
- b) If re-alignment of shareholding of SRPL and JRPL is not necessary, can the shareholding of GLLC in SRPL and of GILLC in JRPL be increased up to 49%?
- c) Is it permissible for equity shares of SRPL to be transferred by GLLC to RJK and for equity shares of JRPL to be transferred by GILLC to SJK? What are the key implications under the Foreign Exchange Management Act, 1999 ("FEMA") and Income-tax Act, 1961 ("IT Act")?
- d) What are the key implications under FEMA and the IT Act on the transfer of equity shares of SRPL and JRPL to Modi Properties Private Limited ("MPPL") and the subsequent transfer of such shares by MPPL to RJK and SJK?

2.2.1 **Given that SRPL and JRPL qualify as FOCCs on account of RJK's and SJK's holdings in SRPL and JRPL respectively, re-alignment of shareholding as envisaged would not be particularly beneficial. However, SRPL and JRPL would fall outside the purview of the downstream investment rules if they do not have any FDI or indirect foreign investment.**

2.2.2 **The key implications from an IT Act and FEMA perspective for the scenarios envisaged by the management for the re-alignment of shareholding of JRPL and SRPL have been captured below.**

Nonetheless

2.2.3 Scenario 1: Direct transfer to RJK and SJK

a) FEMA

- A person resident outside India, not being an NRI or OCI, may transfer by way of sale or gift the equity instruments of an Indian company held by him to any person resident outside India. Given this, equity shares of SRPL held by GGLLC may be transferred to RJK and equity shares of JRPL held by GILLC may be transferred to SJK.
- Given that the equity shares of SRPL and JRPL are held by GGLLC and GILLC respectively on a repatriation basis, on transfer, such shares would automatically be held by RJK and SJK on a repatriation basis. As such, SRPL and JRPL will continue to have FDI even after the direct transfer of its shares and the entities will continue to be subject to the downstream investment rules.
- Please note that the pricing guidelines and reporting requirements under the NDI Rules do not apply to the transfer of equity instruments between persons resident outside India. Further, there are no specifications on modes of payment.

b) IT Act

In the hands of GGLLC/ GILLC

- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of GGLLC and GILLC respectively. Such gains, if any, will be taxable at 10%++ if the equity shares are held for more than 24 months, or else at 40%++.
 - As per Section 50CA of the IT Act, where the consideration received on transfer of equity shares (other than quoted shares) is less than its tax fair market value ("Tax FMV"), such Tax FMV shall be deemed to be the full value of consideration for the purpose of computing capital gains and tax thereon, if any.
 - Tax FMV for Section 50CA of the IT Act shall be determined in accordance with Rule 11UA of the Income-tax Rules, 1962 ("IT Rules") – akin to net book value.
- As per Section 206C(1H) of the IT Act, every seller must collect tax at source from the buyer, on the sale of goods (includes unlisted shares), at

the rate of 0.10% of the sale consideration exceeding INR 50 lakhs in an FY ("TCS Provisions").

- The TCS Provisions are applicable where the total sales, gross receipts or turnover from the business of the seller exceeds INR 10 crores in the FY immediately preceding the FY in which the goods are sold.
- However, the aforesaid provisions would not apply if (i) the goods are exported out of India or (ii) the buyer is liable to withhold tax and has withheld such taxes.
- We have been informed that the total sales, gross receipts or turnover from the business of GGLLC and GILLC have not exceeded INR 10 crores in FY 2022-23, and hence, neither does GGLLC nor GILLC qualify as a 'seller' to invoke the TCS Provisions.

In the hands of RJK/ SJK

- As per Section 56(2)(x) of the IT Act [**"Recipient Tax"**], where a person receives any property (includes shares) from another person for a consideration which is less than its Tax FMV, the excess of the Tax FMV over the consideration paid (where it exceeds INR 50,000) would be subject to tax in the hands of the recipient under the head 'Income from other sources' upto 30%++.
- We understand that the transfer, if undertaken, will be carried out at or above the Tax FMV and accordingly, Recipient Tax shall not apply.
- Tax FMV for the purposes of Section 56(2)(x) of the IT Act shall be determined in accordance with Rule 11UA of the IT Rules – akin to net book value.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.

2.2.4 Scenario 2: Transfer to MPPL and subsequent transfer to RJK and SJK

a) FEMA

Leg 1: Transfer of equity shares of SRPL and JRPL by GGLLC and GILLC respectively to MPPL

- We understand that MPPL is an IOCC.
- A person resident outside India, holding equity instruments of an Indian company may transfer the same to a person resident in India by way of sale or gift and adhere to the pricing guidelines, documentation, and reporting requirements under the NDI Rules.
- The price of equity instruments of an Indian company transferred by a person resident outside India to a person resident in India **shall not exceed** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker or a Cost Accountant, in case of an unlisted Indian company.
- The sale proceeds (net of taxes) may be remitted abroad.
- Form FC-TRS shall be filed for the transfer of equity instruments between a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India.
 - The onus of reporting shall be on the resident transferee.
 - Form FC-TRS shall be filed within 60 days of the transfer of equity instruments or receipt/ remittance of funds whichever is earlier.

Leg 2 : Transfer of equity shares of SRPL and JRPL by MPPL to RJK and SJK respectively

- A person resident in India holding equity instruments of an Indian company may transfer the same to a person resident outside India by way of sale subject to the adherence to entry routes, sectoral caps, pricing guidelines, and other attendant conditions as applicable and documentation and reporting requirements for such transfers under the NDI Rules.

- The entry routes, sectoral caps, pricing guidelines, and other attendant conditions, however, will not apply in case the transferee is an OCI acquiring such investment on a non-repatriation basis.
- For investment on a non-repatriation basis, the amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account.
- Where the shares of SRPL and JRPL are acquired by RJK and SJK on a non-repatriation basis and the entities are wholly owned by RJK and SJK on a non-repatriation basis, the entities would fall outside the purview of downstream investment rules in the absence of any foreign investment.

b) IT Act

In the hands of GGLLC/ GILLC

- Implications captured under para 2.2.3 (b) above in the hands of GGLLC/ GILLC to similarly apply.

In the hands of MPPL

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.
- The following compliances will have to be undertaken:
 - Obtain Form No. 15CA and Form No. 15CB (if applicable).
 - Comply with withholding tax obligations under Section 195 of the IT Act.
- Transfer of equity shares of SRPL and JRPL may result in capital gains tax implications in the hands of MPPL. Such gains, if any, will be taxable at 22%++ (assumed concessional tax regime opted for) given the equity shares will be held for not more than 24 months.
 - Provisions of Section 50CA of the IT Act would not apply where the share transfer is undertaken at or above the Tax FMV.
- TCS Provisions, if applicable, to be complied with.

In the hands of RJK/ SJK

- Recipient Tax provisions would not apply where the share transfer is undertaken at or above the Tax FMV.

Please note, the ensuing questions on the permissibility of investments by SRPL and JRPL in other Indian entities have been answered under the current construct.

2.3 Are there any FEMA implications if investments are made by JRPL and SRPL in the following modes in Indian companies:

- a) Equity Shares, Compulsorily Convertible Preference Shares ("CCPS") or Compulsorily Convertible Debentures ("CCD")**
- b) Optionally Convertible Debentures ("OCD") or Optionally Convertible, Redeemable Preference Shares ("OCPS")**
- c) Non-convertible Debentures ("NCD") or Redeemable Preference Shares ("RPS")**
- d) Inter-corporate Deposits ("ICD")**

2.3.1 It is pertinent to note that the downstream investment regulations apply only to investments made by an Indian entity in the 'capital instruments' of another Indian entity. The term 'capital instruments' has not been defined under the NDI Rules.

2.3.2 Guidance may be taken from the erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("TISPRO"). We wish to highlight that the NDI Rules have superseded TISPRO and the term capital instrument used in TISPRO has been replaced by equity instrument in the NDI Rules.

2.3.3 Given this, capital instruments may be considered to have the same meaning as equity instruments under the NDI Rules. Equity instruments have been defined under the NDI Rules to mean equity shares, convertible debentures, preference shares, and share warrants issued by an Indian company.

2.3.4 'Convertible debentures' means fully and mandatorily convertible debentures while 'preference shares' means fully and mandatorily convertible preference shares. Thus, equity instruments do not include optionally convertible or non-convertible securities such as OCD, OCPS, NCD, and RPS.

- 2.3.5 Having regard to the above, one can say that investment in optionally/ non-convertible instruments by an FOCC would not require adherence to the NDI Rules. However, on conversion of optionally convertible securities into equity instruments, one has to adhere to downstream investment regulations.
- 2.3.6 Accordingly, the pricing guidelines would apply at the time of conversion and not at the time of investment in the case of optionally convertible instruments. However, AD Banks may take a view that pricing at the time of investment should also be considered to determine the floor price.
- 2.3.7 A question may arise as to whether optionally convertible/ non-convertible instruments and ICDs take the colour of External Commercial Borrowings ("ECB") or debt instruments.
- 2.3.8 Such instruments would be out of the purview of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 and Foreign Exchange Management (Guarantees) Regulations, 2000 (collectively "**ECB Regulations**") and Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Debt Instruments Regulations**") as they apply only to investments or lending by a person resident outside India into India. An FOCC being an Indian entity would not be subject to the ECB Regulations and Debt Instruments Regulations.
- 2.3.9 We wish to highlight that the Companies Act, 2013 ("**Companies Act**") provides a framework for acceptance of deposits by companies. As per Section 2(31) of the Companies Act, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI.
- 2.3.10 Any amount received by a company from any other company is carved out from the definition of deposit. Given this, acceptance of loans and deposits by an Indian company from JRPL and SRPL would fall outside the ambit of the aforementioned framework.
- 2.4 **Is it permissible for JRPL and SRPL to invest in Biopolis GV LLP and Inventopolis LLP (collectively "Development LLPs") which are engaged in the business of construction-development and earning of lease rentals?**
- 2.4.1 A person resident outside India may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions ie, investment conditions prescribed for certain sectors.

2.4.2 Similarly, indirect foreign investment is permitted in an LLP in sectors where foreign investment is allowed up to 100% under the automatic route and there are no FDI linked performance conditions.

2.4.3 Construction-development projects include the development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships.

2.4.4 While 100% FDI under the automatic route is permitted for entities undertaking construction-development projects, certain FDI linked performance conditions have been prescribed.

2.4.5 Given the above, indirect foreign investment in the Development LLPs would not be permitted under the automatic route.

2.5 **Is it feasible for SRPL and JRPL to borrow from banks in India against the FCNR (B) deposit of RJK and SJK or by utilizing the standby letter of credit issued by the overseas banker of RJK and SJK?**

2.5.1 We understand that the proposed borrowings are intended to be utilized for the business of SRPL and JRPL as well as for investment in group entities.

2.5.2 Per RBI directions, typically, banks cannot finance the acquisition of equity shares. Given this, borrowings from banks may not be leveraged for investments in other Indian entities.

2.5.3 As per the Foreign Exchange Management (Deposit) Regulations, 2016 ("**Deposit Regulations**"), AD Banks may grant loans (includes fund based/ non-fund based facilities) to third party resident individuals/ firms/ companies in India against the collateral of fixed deposits held in FCNR (B) account, subject to the following conditions:

- a) The loan should be utilised for personal purposes or for carrying on business activities except for relending or carrying on agricultural/ plantation activities or for investment in real estate business.
- b) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.
- c) The usual norms and considerations as applicable in the case of advances to trade/ industry shall apply to such credit facilities.

- d) The margin requirement shall be notionally calculated on the INR equivalent of the deposits.
- 2.5.4 Given the above, SRPL and JRPL may borrow from banks in India against the FCNR (B) deposit of RJK and SJK for business purposes.
- 2.5.5 As per the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations (updated as on December 22, 2023), borrowing and lending in INR between two residents does not attract any provisions of FEMA.
- 2.5.6 In cases where an INR facility that is either fund based or non-fund based (such as a letter of credit/ guarantee/ letter of undertaking/ letter of comfort) is guaranteed by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.
- 2.5.7 The arrangements shall be with the following terms:
- a) The non-resident guarantor may discharge the liability by i) payment out of INR balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/ NRE account maintained with an AD Bank in India.
 - b) The non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery, he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/ NRE account.
 - c) The repayment may be made by credit to the FCNR(B)/ NRE/ NRO account of the guarantor, provided the amount remitted/ credited shall not exceed the INR equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.
 - d) However, in case the liability is discharged by payment out of INR balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
 - e) General permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.

2.5.8 Based on our discussions with the AD Banks, we understand that while standby letter of credit is not treated as a guarantee, in case the standby letter of credit is drawn, the aforementioned terms will similarly apply.

2.6 **Is it permissible for RJK and SJK to borrow from banks/ financial institutions/ private lenders, in India for the purpose of:**

- a) **Onward lending (unsecured loan) to SRPL and JRPL**
- b) **Investment in equity shares, CCD or CCPS of SRPL and JRPL**
- c) **Investment in OCD or OCPS of SRPL and JRPL**
- d) **Investment in NCD or RPS of SRPL and JRPL**

on repatriation or non-repatriation basis.

2.6.1 A person resident in India is permitted to lend to a borrower being a person resident outside India under the automatic route only in specific cases under the ECB Regulations.

2.6.2 An AD Bank in India may grant a loan in INR to an NRI/ OCI Cardholder for his own business purposes. Such loans may not be used for restricted end uses such as investment in capital markets and real estate activity.

2.6.3 Given that AD Banks and persons other than AD Banks are not specifically permitted to lend to borrowers being persons resident outside India under the automatic route for the purposes of relending or investment in India, borrowings by RJK and SJK as envisaged would not be feasible.

2.6.4 Please note, AD Banks may grant loans in India to the holders of NRE account/ FCNR(B) deposit against security of funds held in such accounts for the purpose of making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.

2.6.5 Repayment of the loan shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local INR resources in the NRO account of the borrower.

2.6.6 However, in any case, investment by RJK and SJK in Indian entities would require adherence to NDI Rules, ECB Regulations and Debt Instruments Regulations, as the case may be.

2.7 Is SRPL or JRPL a Non-banking Financial Company ("NBFC") or a Core Investment Company ("CIC")?

2.7.1 In terms of the Reserve Bank of India Act, 1934 ("RBI Act") and the rules and clarifications prescribed thereunder, no company shall commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration and complying with related conditions thereto.

2.7.2 An NBFC has been defined to mean:

- a) A financial institution which is a company.
- b) A non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner.
- c) Such other non-banking institution or class of such institutions, as may be notified.

2.7.3 A financial institution means any non-banking institution that carries on as its business or part of its business any of the following activities:

- a) The financing, whether by way of making loans or advances or otherwise, of any activity other than its own.
- b) The acquisition of shares, stocks, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature.
- c) Letting or delivering of any goods to a hirer under a hire-purchase agreement.
- d) The carrying on of any class of insurance business.
- e) Managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries, or any business, which is similar thereto.
- f) Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are

collected or to any other person.

- 2.7.4 Only companies predominantly engaged in financial activity would be required to be registered with and be regulated by RBI. Hence, if the company is engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, or sale or construction of immovable property as its principal business and financial business constitutes a minor portion of its operations, it will not be regulated by the RBI.
- 2.7.5 As per the press release dated April 8, 1999, to identify whether a particular company is an NBFC, the assets and income pattern as evidenced by the last audited balance sheet date is to be considered to decide its principal business.
- 2.7.6 'Financial activity' is deemed to be the principal business activity if a company satisfies the below mentioned 50-50 test:
- a) Financial assets are more than 50% of its total assets (netted off by intangible assets); and
 - b) Income from financial assets should be more than 50% of the gross income.
- 2.7.7 Financial assets include assets that are financial in nature except cash, bank deposits, advance payment of taxes and deferred tax payments.
- 2.7.8 It has been clarified by the RBI that the activity of 'leasing and finance' which is amongst the activities undertaken by NBFC covers only 'financial leases' and not 'operating leases'.
- 2.7.9 Based on a perusal of the audited financials of SRPL and JRPL for the period ended March 31, 2023, it is apparent that the 50-50 test will not be met. This evaluation has to be made on a year on year basis.
- 2.7.10 However, in a scenario where Ramkey Selenium is transferred, given the assets would then substantially comprise of investments in and loans to group entities and the income would majorly comprise of income from such investments and loans, the risk of SRPL and JRPL qualifying as an NBFC cannot be ruled out.
- 2.7.11 CIC means an NBFC carrying on the business of acquisition of shares and securities having total assets of not less than INR 100 crore either individually or in aggregate along with other CIC in the Group and which raises or holds

public funds. The following conditions are to be satisfied as on the date of the last audited balance sheet company:

- a) Holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies.
 - b) Investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitute not less than 60% of its net assets.
 - c) Does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.
 - d) It does not carry on any other financial activity.
- 2.7.12 Given that SRPL and JRPL are not NBFCs, it could be argued that they do not qualify as CICs even if the conditions stipulated therein are satisfied. However, given that RBI has clarified that CICs need not meet the principal business criteria stipulated for NBFCs, one can also argue that if conditions stipulated for CICs are satisfied, CIC registration would have to be obtained.
- 2.7.13 As of date, in any case, given that the total assets of SRPL and JRPL do not exceed INR 100 crore nor do they satisfy other conditions prescribed, SRPL and JRPL would not be construed as CICs.

3. SCOPE LIMITATIONS

- 3.1 The content of the note and any views expressed therein are entirely based on information and documentation provided to us. Our conclusions are based on the completeness and accuracy of the stated facts and assumptions. Any inaccuracy could have a material impact on our views or conclusions and should therefore be intimated to us immediately.
- 3.2 The conclusions reached and views expressed in the note are matters of view. Our view is based on our understanding of the India law and regulations prevailing as of the date of this note and our past experience with the tax and/or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.

- 3.3 Legislation, its administrative and judicial interpretation, and the policies of the tax and/or regulatory authorities are subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulation occurring after the date of this note.
- 3.4 Notwithstanding anything to the contrary, this note was prepared exclusively for JRPL and SRPL and is based on the specific facts presented to us by JRPL and SRPL as at the date of this note. The advice is dependent on specific facts and circumstances and may not be appropriate to another party. This note was prepared with only the interests of JRPL and SRPL in mind and was not planned or carried out in the contemplation of any use by any other party.
- 3.5 Aeka Advisors, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) howsoever arising, and shall not be liable for any claim whatsoever in respect of any loss, damage or expense of whatever nature which is caused to or suffered by any other party.
- 3.6 This note or any portion thereof may not be distributed or otherwise made available to anyone else without our prior written consent. In various sections of this document, for ease of understanding and as a stylistic matter, terms such as "is" or "will" or "should" may be used. Such language should not be construed to alter the "Conclusions" section of this document.
- 3.7 This advice is not intended or written to be used, and it cannot be used, for the purpose of avoiding any taxes and applicable penalties. The content of this note is limited to the matters specifically addressed herein and is not intended to address other potential tax consequences or the potential application of tax penalties to this or any other matter.

Tax Return Compliances

AIC

From: Ashish (ashish@asagarwal.in)

To: sambasivarao@modiproperties.com

Cc: sohammodi@modiproperties.com; gopika@asagarwal.in; madhu@asagarwal.in

Date: Monday, October 16, 2023 at 01:43 PM GMT+5:30

Dear Sir

Please note that as per the Indian Transfer pricing regulations, any non-resident holding atleast 26% of the equity capital/ voting rights in any organisation/ entity is considered as an Associated Enterprise (AE). There are other deeming criterias as per which a person can become an AE without fulfilling the 26% criteria mentioned above.

In our case, Sharad Bhai, Rajesh Bhai and entities incorporated by them outside India are all non-residents of India and shall be regarded as AE of Indian companies whenever the aforementioned criteria are met. The effect of the above is that the following compliances are triggered:

1. Filing of form 3CEB – We need to report that all the transactions with AEs, nature and amount of transaction and that the transactions are at arm's length price; Even issue of shares is a transaction and filing is required. Where there are no transactions during the year, filing is not required
2. Master file – Entities which are part of a group need to file this form listing out all the AEs in India; In case if the consolidated group turnover crosses Rs 500 crores and certain other criteria is met (not mentioning in the interest of simplicity), we are required to file part B of this master file which has much more extensive details and information requirement
3. Maintenance of TP study – Required to explain the nature of transaction, and also analysis that demonstrates that the transaction is at arm's length
4. Filing of Income tax return – wherever form 3CEB is getting filed, due date for tax return filing shall be 30 November instead of 31 October.

Please feel free to contact us in case you need any clarification.

Best Regards

Ashish

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- ① JMK GEC
- ② SONMKT
- ③ GVDC — Return already filed.
- ④ GVRC
- ⑤ Crescentia Labs
- ⑥ AMT2 Companies.

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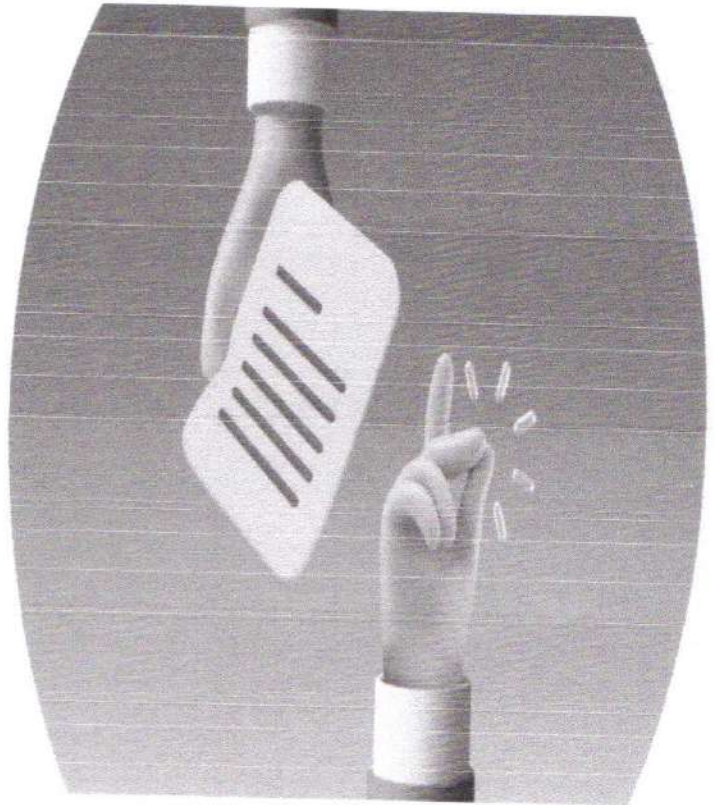
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Form 3CEB: Due Date, Applicability, How to File Form 3CEB Of Income Tax Act Online

Updated on: Apr 4th, 2023

| 9 min read



CONTENTS [Show]

According to Section 92A to Section 92F of the Income Tax Act of 1961, if a company engages in any domestic or foreign transactions with any associated enterprises, it must submit Form 3CEB of the Income Tax Act in accordance with transfer pricing regulations. It is mandatory to file an accountant's report for this form that has been prepared by an independent audit professional.

File Now

The last date for filing Form 3CEB (AY 2023-24) for companies required to furnish a report under Section 92E of the IT Act is 30th November, 2023.

Applicability of Form 3CEB

Form 3CEB is applicable to companies that engage in international and specified domestic transactions with any associated enterprise. Businesses have to file this form irrespective of the value of international transactions, but for domestic transactions, only if the value exceeds Rs. 20 crore in a fiscal year.

A thorough report from an independent chartered accountant is required from all businesses that engage in such deals.

The fee that one business charges its associated business for the goods and services it has provided is referred to as transfer pricing. Form 3CEB follows two conditions as set by transfer pricing regulations. These are:

- International transactions involving two or more associated firms, any or both of which can be foreign businesses;
- Specified domestic transactions involving transfer pricing but not including international transactions.

How to File Form 3CEB Online?

Form 3CEB can be filed online by following these easy steps:

Step 1: You need to avail the services of a licensed Chartered Accountant (CA) who will audit the business transactions. Once you log in to your [e-filing portal](#) account, navigate to the 'My Chartered Accountants' page and add a CA authorised by you

entering the assessment year.

Step 3: Once the form has been successfully assigned, the CA can find it in his/her work list in the 'For Your Action' section. He/she can either accept or reject the assignment. If the assigned CA rejects it, you must reassign the form.

Step 4: If the CA accepts the task, he will fill in all the necessary details in the form after proper assessment and auditing.

Step 5: Once done, you can find the form uploaded by the CA in the Taxpayer's work list. You can click the 'For Your Action' button and find the form marked 'Pending for Acceptance'. You can either accept or reject it after reviewing the form. Once you approve it, Form 3CEB will be filed.

Form 3CEB of Income Tax Act - PDF Format

You can download Form 3 CEB in PDF format from the Income Tax India official website. This form comprises three parts - Part A, Part B and Part C.

Let's take a look at different parts of the Form 3CEB of the Income Tax Act:

Part A

Part A contains basic details that need to be filled up.

Part B

In Part B, there's a lot of information related to international transactions must be provided.

This includes information about the associated enterprises with whom the business has entered into international transactions, particulars in respect of transactions in tangible and

Part C

Part C of the form is solely dedicated to specified domestic transactions. While Part B focuses on international transactions, Part C is on engagements with domestic enterprises.

Click [here](#) to view/download Form 3CEB.

Final Word

As per Section 92E of the Income Tax Act, which relates to international transactions and specified domestic transactions, filing Form 3CEB is mandatory for companies who are engaged in foreign or domestic business with associated enterprises. Taxpayers must strictly follow the requirements listed in Form 3CEB; otherwise, there are penalty rules which might be enforced.

Frequently Asked Questions

What are the reporting requirements under Form 3CEB?

The following details must be reported in Form 3CEB:

- Basic details of the assessee and the total value of international transactions.
- Details related to international transactions throughout a financial year.
- Details of specified domestic transactions done in a financial year.

What is the penalty for non-compliance with the requirements under Form 3CEB?

- There is a fine of 2% of the transaction amount if given information is inadequate.
- If there is an error in the information provided, there is a penalty of 2% on the transacted amount.

How can I generate and update UDIN for form 3CEB?

A working Chartered Accountant can generate a Unique Document Identification Number (UDIN) by visiting the [ICAI website](#). To update UDIN, log in to the income tax website and click the 'View/Update UDIN details' under 'e-file' in the 'Income Tax Forms' tab.

What should I do if I see "INVALID UDIN" while updating UDIN?

Here are some points you can check to ensure the UDIN is valid during updation:

- Year of filing the form and creating the UDIN should be the same
- UDIN should be created for Form 3CEB
- UDIN should not have been revoked at the UDIN portal

What should I do in case of error "INVALID DSC" for form 3CEB?

While uploading the Digital Signature Certificate (DSC) for Form 3CEB report, both you and the CA must ensure that the:

- DSC has not expired
- DSC management utility (emBridge) that generates the signature file is updated
- DSC has been registered on the Income Tax portal in the user's login

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Business, Professional & Freelance

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New Income Tax Portal

Incometax.gov.in

Income from Selling Shares

Income Tax Due Dates

Re: Note on discussion for today's meeting

From: team2 . <team2@hineshdoshi.com>

To: Soham Modi <sohammodi@modiproperties.com>

Cc: Ashish <ashish@asagarwal.in>, Aruna K Admin <aruna@modiproperties.com>, Nirisha CA <nirisha@modiproperties.com>, Sharad J. Kadakia <sharad.kadakia@greens.com>, Rajesh Kadakia <rk@greensglobal.com>, Aarti Karwande <aarti@hineshdoshi.com>

Dear Mr. Modi,

Please find below replies to your queries.

Queries:

a. Is it mandatory to route the funds for sale of shares as given above through physical transfer via NRO account in India?

Reply: Yes, In case of transfer of shares from Non-resident to NRI (on non- repatriation basis), funds have to physically flow from NRO A/c in India.

b. Is there any lock-in period for sale of shares as proposed above under FDI/ NDI rules?

Reply: There is no Lock in Period for sale of shares under FDI/NDI rules. Restriction of 1 year is applicable in case of optionality clause mentioned, which is not applicable in your case.

c. The model of business is to buy land (non-agricultural and typically industrial zoned land) and develop it into industrial spaces for lease or sale (post development/occupancy certificate). The developed buildings + land will be sold at entity level i.e., SPVs will be sold rather than transfer of assets owned by the SPV. Are there any restrictions on such transactions or in general wrt non-repatriable funds being used for such developments?

Reply: Real estate definition under FEMA excludes following:

Development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

Hence the activities mentioned hereunder can be undertaken without any restrictions through repatriable as well as non-repatriable funds.

d. An other route of bringing non-repatriable funds is by loan against FCNR deposits or by way of loans against standby letter of credit (SBLC). Are there any restrictions on use of such funds for developments proposed?

Reply: Yes, the option is available. In case of FCNR deposit, terms and conditions as applicable in NRE deposit regulations are to be followed. Attached herewith the extract of the regulation. You may refer to the yellow

highlighted part for restrictions.

e. The proposed transfer of shares between GLLC/GGILLC and SJK/RJK is without introduction of physical capital. Form FC TRS is required to be filed by NRIs to transfer the shares on non-repat basis. Can FC TRS be filed without bringing in physical capital?

Reply: No, Form FC-TRS Cannot be filed without bringing in physical capital. At the time of filing the form, there is an attachment required wrt outflow of funds for acquisition of shares.

Thanks and regards,

Aarti Karwande

Kinjal Visaria

HINESH R DOSHI & CO. LLP

Chartered Accountants

3rd floor, Palai Plaza, Swami Gyan Jivandas Marg, Dadar (East), Mumbai - 400014

Board Line: 022-66008100

Email ID: team2@hineshdoshi.com / info@hineshdoshi.com

Video Conferencing IP: 103.204.166.11 / **Website :** <http://www.hineshrdoshicollp.com/>

"A mistake is only a mistake if you don't learn from it."

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On Wed, Aug 9, 2023 at 9:19 PM Aarti Karwande <aarti@hineshdoshi.com> wrote:

Dear Soham bhai,

Dear Ashish,

We have noted your email.below and shall reply by Friday this week.

Thanks and regards,

Aarti Karwande

HINESH R DOSHI & CO LLP

Chartered Accountants

Palai Plaza, 3rd Floor, Opp Hotel Pritam, 9 Kohinoor Road, Dadar (East), Mumbai -400014

Direct Line : 022-66008127 / **Mobile :** 09987929041

Email ID: aarti@hineshdoshi.com / team2@hineshdoshi.com

"A mistake is only a mistake if you don't learn from it."

On Wed, 9 Aug, 2023, 4:19 pm Soham Modi, <sohammodi@modiproperties.com> wrote:

Aarthi,

I am adding my note for clarity in the matter. Can we connect on Zoom/Teams on Friday.

Regards,

Soham Modi.

Note on SRPL/JRPL - FOCC related issues

Date: 9-8-2023

1. RJK & SJK are US citizens. RJK + SJK have only one asset in India in their name i.e., Greens Towers. Greens Towers is an 80k sft building on about 5000 sq yds of land, leased to Sonata Software for a monthly rent of about Rs. 60 lakhs. Market value of property is between Rs. 100 to 150 cr. Circle rate is about Rs. 60 cr.
2. SJK is 99% owner of JRPL (Private limited company). JRPL is owner of about 25k sft of office space in Ramky Selenium, which is fetching a rent of about Rs. 45/- per sft per month. Market value of property is about Rs. 20 cr. SJK has also invested into (equity + unsecured loan) AMTZ 4554, AMTZ 801, GVRC, GVDC, GV1. These are all private limited companies who have purchased industrial land and are developing industrial buildings (Lab spaces for life science companies).
3. RJK is 99% owner of SRPL (Private limited company). It has made identical investments as JRPL.
4. GVRC (500k sft on 9 acres) – 2 of 5 blocks are completed and leased.
5. GVDC (150k sft on 2.25 acres) – one block almost completed and leased. GVDC is proposed to be sold to RXP, a UK based PE fund. Agreement for sale of shares is signed.
6. GV1 (125k sft on 1.8 acres) – one block is scheduled to be completed in mid 2024. GV1 is proposed to be sold to RXP, a UK based PE fund. Agreement for sale of shares is signed.
7. AMTZ 801 (100k sft on 1.25 acres) and AMTZ 4554 (70k sft on 2.225 acres) – land acquired, permits received, construction has just started.
8. GVRC, GVDC, GV1, AMTZ 801, AMTZ 4554 have been valued based on books of accounts. Ramky Selenium has been valued at market rate.
9. JRPL received USD 10k in December, 2022 as FDI. Another USD 500k was received in May, 2023. Against this equity was allotted after valuation of the company. JRPL became an FOCC company in Dec, 22.
10. Similarly, SRPL received FDI of USD 10k in Sept, 22 and USD 500k in Nov, 22. It became an FOCC in Sept, 22.
11. The FDI was made through 2 LLCs incorporated in USA i.e., GGLLC, GGILLC.

12. It was recently learnt that FOCC companies are barred from making downstream investment in LLPs. Future projects for development of lab spaces are proposed to be in LLPs so that co-investors can enjoy the rent without double taxation.
13. In the near future it is likely that SRPL & JRPL will be deemed to be NBFC as both income and assets from financial instruments may exceed 50% threshold. FDI in NBFCs (including CICs) is complicated and avoidable.
14. For the 2 reasons given above it is proposed that the FDI in SRPL & JRPL is reversed so that both companies are no longer FOCCs (i.e., they do not attract any rules under FEMA).
15. It is proposed that the shares of GGILLC and GGLLC are sold to RJK & SJK in the US i.e., amounts will be paid by NRIs to foreign companies in the US. Any tax on capital gains shall be paid in India.
16. Queries:
 - a. Is it mandatory to route the funds for sale of shares as given above through physical transfer via NRO account in India?
 - b. Is there any lock-in period for sale of shares as proposed above under FDI/ NDI rules?
 - c. The model of business is to buy land (non-agricultural and typically industrial zoned land) and develop it into industrial spaces for lease or sale (post development/occupancy certificate). The developed buildings + land will be sold at entity level i.e., SPVs will be sold rather than transfer of assets owned by the SPV. Are there any restrictions on such transactions or in general wrt non-repatriable funds being used for such developments?
 - d. An other route of bringing non-repatriable funds is by loan against FCNR deposits or by way of loans against standby letter of credit (SBLC). Are there any restrictions on use of such funds for developments proposed?
 - e. The proposed transfer of shares between GGLLC/GGILLC and SJK/RJK is without introduction of physical capital. Form FC TRS is required to be filed by NRIs to transfer the shares on non-repat basis. Can FC TRS be filed without bringing in physical capital?

On 08-08-2023 12:10:14, Ashish <ashish@asagarwal.in> wrote:

Dear Aarti

As per our discussion yesterday, I am summarising your view and my understanding on the subject:

1. We have proposed to transfer shares of JRPL and SRPL held by GG LCC/ GI LLC to Sharad and Rajesh Sir. Both are to hold the shares under non-repatriation basis
2. Upon this transfer, we understand that it is mandatory for Sharad and Rajesh Sir to infuse/ bring capital into their local Indian NRO bank accounts from which the payment shall be made
3. This is required such that Form FC TRS can be filed with the banker wherein we can communicate that the shares are held on non-repat basis
4. In case the money is not brought into India and paid from the Indian bank accounts, we understand that FC TRS is not required to be filed and hence the communication

cannot be done.

Kindly confirm if the above is correct.

Kindly find attached a reference/ screenshot of the document as per which in case of transfer of shares from a NR to NRI (holding shares on non-repat basis) FC TRS is required to be filed by the NRI. The regulations do not insist on the money to be routed through Indian bank accounts. Therefore, can you confirm if we can avoid bringing capital to India and file FC TRS? Is there a practical requirement to this which is not mentioned in the regulations.

Thank you for your inputs.

Please feel free to contact us in case you need any clarification.

Best Regards

Ashish

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generated with medium
Ashish Agarwal | Partner
confidence

2nd Floor, 3-3-116/A, Kachiguda,

Hyderabad, Telangana 500027, India

Office: +91 40 4018 3449 | Cell: +91 9849737505

Ashish@Asagarwal.in | www.asagarwal.in

From: aruna@modiproperties.com <aruna@modiproperties.com>

Sent: Monday, August 7, 2023 2:45 PM

To: 'Aarti Karwande' <aarti@hineshdoshi.com>

Cc: 'Soham Modi' <sohammodi@modiproperties.com>; Ashish <Ashish@asagarwal.in>; nirisha@modiproperties.com; 'Sharad J. Kadakia' <sharad.kadakia@greens.com>; 'Rajesh Kadakia' <rk@greensglobal.com>

Subject: Note on discussion for todays meeting

Minutes of meeting held at Modi Properties office.

Date: 7-8-2023.

Present: Mr. Ashish Agarwal, Mr. Soham Modi, Ms. /nirisha, Mr. Sharad Kadakia and Mr. Rajesh Kadakia

1. Hinesh Doshi and Co., to confirm if SRPL & JRPL are FOCC:
 - a. Before receipt of FDI in 2022.
 - b. After receipt of FDI in 2022.
2. Hinesh Doshi and Co., to confirm applicability of indirect FDI / downstream investment (DI) rules to SRPL & JRPL:
 - a. Before receipt of FDI in 2022.
 - b. After receipt of FDI in 2022.
3. Can GILLC and GGILLC sell their shares in the USA to SJK & RJK respectively? If allowed capital gains/tax liability has to be checked. Query: Can the investment made by FDI through GILLC and GGILLC be now recategorized as non-repatriable? Are there any lockin restrictions on FDI investments?
4. Can SRPL make DI in Inventopolis LLP? Inventopolis LLP is acquiring industrial land to develop lab spaces. In the NDI rules of 2019, it was barred since LLP have FDI link conditions under automatic route. However the NDI master directions of 2022 do not specify such a condition.
5. An amendment by notification dated 6-8-21 – SO no. 3206E – 'An investment made by an Indian entity which is owned and controlled by NRIs on non-repatriation basis, shall not be considered for calculation of indirect foreign investment'. How does it impact our present structure?

Attachments:

Notification 5(R) - FCNR & NRE.pdf (147 KB)

cannot be done.

Kindly confirm if the above is correct.

Kindly find attached a reference/ screenshot of the document as per which in case of transfer of shares from a NR to NRI (holding shares on non-repat basis) FC TRS is required to be filed by the NRI. The regulations do not insist on the money to be routed through Indian bank accounts. Therefore, can you confirm if we can avoid bringing capital to India and file FC TRS? Is there a practical requirement to this which is not mentioned in the regulations.

Thank you for your inputs.

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Ashish@Asagarwal.in | www.asagarwal.in

From: aruna@modiproperties.com <aruna@modiproperties.com>

Sent: Monday, August 7, 2023 2:45 PM

To: 'Aarti Karwande' <aarti@hineshdoshi.com>

Cc: 'Soham Modi' <sohammodi@modiproperties.com>; Ashish <Ashish@asagarwal.in>; nirisha@modiproperties.com; 'Sharad J. Kadakia' <sharad.kadakia@greens.com>; 'Rajesh Kadakia' <rk@greensglobal.com>

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Attachments:

Notification 5(R) - FCNR & NRE.pdf (147 KB)

SCHEDULE 1
[See Regulation 5(1) (i)]

Non-Resident (External) Rupee Account Scheme – NRE Account

1. Eligibility:

Non-resident Indians (NRIs) and Person of Indian Origin (PIOs) are permitted to open and maintain these accounts with authorised dealers and with banks (including cooperative banks) authorised by the Reserve Bank to maintain such accounts.

The account should be opened by the non-resident account holder himself and not by the holder of the power of attorney in India.

2. Types of accounts:

The accounts may be maintained in any form, e.g. savings, current, recurring or fixed deposit account etc.

3. Permitted Credits:

- a) Proceeds of remittances to India in any permitted currency.
- b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India, provided the authorised dealer/ bank is satisfied that the account holder is still resident outside India, the travellers' cheques/ drafts are standing/ endorsed in the name of the account holder and in the case of travellers' cheques, they were issued outside India.
- c) Proceeds of foreign currency/ bank notes tendered by account holder during his temporary visit to India, provided (i) the amount was declared on a Currency Declaration Form (CDF), where applicable, and (ii) the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.
- d) Transfers from other NRE/ FCNR (B) accounts.
- e) Interest accruing on the funds held in the account.
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India
- g) Maturity or sale proceeds of any permissible investment in India which was originally made by debit to the account holder's NRE/ FCNR (B) account or out of remittances received from outside India through banking channels.

Provided that the investment was made in accordance with the foreign exchange regulations in force at the time of making such investment.

h) Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/ FCNR (B) account of the account holder or by remittance from outside India through banking channels.

i) Refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings / deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/ FCNR(B) account of the account holder or remittance from outside India through banking channels and the authorised dealer is satisfied about the genuineness of the transaction.

j) Any other credit if covered under general or special permission granted by Reserve Bank.

4. Permitted Debits:

a) Local disbursements.

b) Remittances outside India.

c) Transfer to NRE/ FCNR (B) accounts of the account holder or any other person eligible to maintain such account.

d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by the Reserve Bank.

e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

5. Rate of Interest:

Rate of interest applicable to these accounts shall be in accordance with the directions/ instructions issued by Reserve Bank from time to time

6. Loans against security of funds held in the account:

(1) To account holder: Authorised dealers and authorised banks maintaining such accounts are permitted to grant loans in India to the account holder subject to the following conditions:

(a) The loan shall be used for:

i) personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business.

ii) making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies subject to the provisions of the relevant Regulations made under the Act

iii) acquiring flat/ house in India for his own residential use subject to the provisions of the relevant Regulations made under the Act

(b) Repayment shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local rupee resources in the NRO account of the borrower.

(2) To third parties: Authorised dealers and authorised banks may grant loans to resident individuals/ firms/ companies in India against the collateral of fixed deposits held in NRE account subject to the following conditions:

i) The loan should be utilised for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business.

ii) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.

iii) The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable to such credit facilities.

(3) ³Loans outside India - Authorised dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business, against the security of funds held in the NRE accounts in India and also agree for remittance of the funds from India, if necessary, for liquidation of the outstanding.

(4) The authorised dealer/ bank should ensure that the advances are fully secured by the fixed deposits and regulations relating to normal margin, interest rate, etc. are complied with.

(5) The loans granted under this paragraph shall be subject to such directions as may be issued by the Reserve Bank from time to time.

(6) The term "loan" shall include all types of fund based/ non-fund based facilities.

7. Change of residential status of the account holder:

NRE accounts should be re-designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts (if the account holder is eligible for maintaining RFC account) at the option of the account holder

³ Inserted by a Corrigendum with effect from April 01, 2016 vide G.S.R 869(E) dated September 8, 2016. Prior to insertion it read as: "Loans outside India - Authorised dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business, against the security of funds held in the NRE accounts in India and also agree for remittance of the funds from India, if necessary, for liquidation of the outstanding."

immediately upon the return of the account holder to India for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.

8. Repatriation of funds to non-resident nominee:

Authorised dealers/ authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

9. Miscellaneous:

(a) Joint accounts – Joint accounts may be permitted to be opened in the following cases:

- i) In the names of two or more NRIs and/or PIOs
- ii) With resident relative(s) on 'former or survivor' basis. However, the said resident relative shall be eligible to operate the account as a Power of Attorney holder in accordance with the extant instructions during the life time of the account holder.

Explanation – For the purpose of this regulation, 'relative' means relative as defined in section 2(77) of the Companies Act, 2013.

b) Opening of account during temporary visit: An account may be opened in the name of an eligible NRI or PIO during his temporary visit to India against tender of foreign currency travellers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.

c) Operations by Power of Attorney: Authorised dealers/ authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through banking channels. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder may be permitted by the authorised dealers/ banks to operate the account to facilitate such investment. The resident Power of Attorney holder shall not, however, be allowed to repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder nor to transfer funds from the account to another NRE account.

d) Special Series of Cheques: For easy identification and quicker processing of cheques drawn on NRE accounts, authorised dealers/ banks shall issue cheque books containing a special series of cheques to their constituents holding NRE accounts.

e) Temporary overdrawings: Authorised dealers/ authorised banks may at their discretion/ commercial judgement allow for a period of not more than two weeks, overdrawings in NRE savings bank accounts, up to a limit of Rs.50,000

subject to the condition that such overdrawings together with the interest payable thereon are cleared/ repaid within the said period of two weeks, out of inward remittances through banking channels or by transfer of funds from other NRE/ FCNR(B) accounts.

f) Remittances abroad by Resident nominee: Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.

g) Tax Exemption: Income from interest on balances standing to the credit of NRE Accounts is exempt from Income Tax. Likewise balances held in such accounts are exempt from wealth tax.

h) Reporting: The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

SCHEDULE 2
[See Regulation 5(1) (ii)]

FOREIGN CURRENCY (NON-RESIDENT) ACCOUNT (BANKS) SCHEME – FCNR (B) Account

1. Eligibility:

- (a) NRIs and PIOs are eligible to open and maintain these accounts with an authorised dealer.
- (b) These accounts may be opened with funds remitted from outside India through banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with an authorised dealer in India or funds which are of repatriable nature in terms of the regulations made by Reserve Bank. Accounts may also be opened by transfer of funds from existing NRE/ FCNR (B) accounts.
- (c) Remittances from outside India for opening of or crediting to these accounts should be made in the designated currency in which the account is desired to be opened/ maintained.

Without prejudice to this, if the remittance is received in a currency other than the designated currency (including funds received in rupees by debit to the account of a non-resident bank), it should be converted into the latter currency by the authorised dealer at the risk and cost of the remitter and account should be opened/ credited in only the designated currency.

- (d) In case the depositor with any currency other than designated currency desires to place a deposit in these accounts, authorised dealers may undertake with the depositor a fully covered swap in that currency against the desired designated currency. Such a swap may also be done between two designated currencies.

2. Designated Currencies: Deposit of funds in the account may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.

3. Type of account:

These accounts may be opened only in the form of term deposit with maturity of such period as may be specified by the Reserve Bank from time to time.

4. Rate of Interest:

The rate of interest on funds held in these deposit accounts will be in accordance with the directives issued by the Reserve Bank from time to time.

5. Permissible Debits/ Credits:

All debits/ credits permissible in respect of NRE accounts as specified in Schedule 1 shall be permissible in respect of these accounts also.

6. Rate for Conversion of Rupees into Designated Currencies and vice versa:

- i) Remittances received in Indian rupees for opening these accounts shall be converted by the authorised dealer into the designated foreign currency at the clean T.T. selling rate for that currency ruling on the date of conversion.
- ii) For the purpose of payment in rupees, funds held in these accounts shall be converted into rupees at the authorised dealer's clean T.T. buying rate for the concerned currency ruling on the date of withdrawal.

7. Inland Movement of Funds:

Any inland movement of funds for the purpose of opening these accounts as well as for repatriation outside India of balances held in these accounts will be free of inland exchange or commission for the non-resident depositors. The Authorised dealer receiving foreign currency remittances in these accounts will also, on request, pass on the foreign currency to another authorised dealer if the account has to be opened with the latter, at no extra cost to the remitter.

8. Manner of Payment of Interest:

- (i) Interest on balances held in these accounts may be paid half-yearly or on an annual basis as desired by the depositor.
- (ii) Interest may be credited to a new FCNR (B) account or an existing/ new NRE/ NRO account in the name of the account holder, at his option.

9. Loans/ overdrafts against security of funds held in the account:

(1) The terms and conditions as applicable to NRE deposits (cf. Schedule 1) in respect of loans and overdrafts in India to depositor and to third parties as also loans outside India against security of deposits, shall apply mutatis mutandis to FCNR(B) deposits.

(2) The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.

10. Change of residential status of the account holder:

When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR (B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the accountholder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the accountholder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

11. Joint account, repatriation of balances, etc.:

(1) Terms and conditions as applicable to NRE accounts (cf. Schedule 1) in respect of joint accounts, repatriation of funds, opening account during temporary visit, operation by power of attorney, loans/ overdrafts against security of funds held in accounts, shall apply mutatis mutandis to FCNR (B) accounts.

(2) Authorised dealer may permit remittance of the maturity proceeds of FCNR (B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the authorised dealer is satisfied about the bona fides of the transaction.

12. Reporting:

The transactions in these accounts shall be reported to Reserve Bank in accordance with the directions issued by it from time to time.

13. Other features:

(a) Reserve Bank will not provide exchange rate guarantee to authorised dealers for deposits of any maturity in these accounts.

(b) Lending of resources mobilised by authorised dealers under these accounts are not subject to any interest rate stipulations.

A/C

Road map for reversal of FDI – conversion of SRPL/JRPL to NON- FOCCS

Date: 11-8-2023

1. GILLC has purchased 84 shares at the rate of Rs. 9,689/- in Dec, 22 + 3,122 shares @ Rs. 13,012/- in June, 23. These are to be sold to SJK in July/Aug, 23, preferably @ Rs. 13,012/- per share. Approximate capital gain is Rs. 2.79 lakhs.
2. GGILLC has purchased 95 shares at the rate of Rs. 8,346/- in Sept, 22 + 4,864 shares @ Rs. 8,346/- in Nov, 22. These are to be sold to RJK in July/Aug, 23, preferably @ about Rs. 9,000/- per share. Approximate capital gain @ Rs. 9,000/- is Rs. 32.43 lakhs.
3. GILLC and GGILLC need Pan registration for the purpose of payment of tax. For that company registration of the LLCs need certification by Indian consulate in the USA. In the mean time make application with notarized copies by 12/8. SJK to obtain certified copies from Indian consulate ASAP.
4. RJK & SJK need TAN nos for deducting TDS on the above capital gains in favour of GILLC and GGILLC. Application for TAN must be made immediately (before 12/8).
5. Presuming that physical transfer of funds can be done within 30 days of transfer of shares, SH4 shall be filed ASAP for the said transfers. Transfer date to be determined by Ashish Agarwal. Rate of transfer shall be based on valuation report (report form CA will suffice - merchant banker valuation not required).
6. Draft valuation report from CA is required before 19/8. Original report may be received at the earliest possible. For that value of Ramky Selenium is required at the rate of about Rs. 6,000/- per sft. Kanaka Rao/Waseem to ensure that report is received before 16/8.
7. SJK to transfer Rs. 4.17 cr i.e., USD 500k immediately through NRO a/c on non-repat basis. Kusum to check documentation required. Nirisha to complete the formalities. This amount to be transfer back to GILLC.
8. Once amount is returned to GILLC, RJK to send about USD 540k for purchase of shares through NRO a/c on non-repat basis. This amount to be transferred back to GILLC.
9. Aarti to advice on filing of FC TRS or similar forms to ensure that SRPL/JRPL do not have any repat funds.



Sent at: 11-08-2023 14:21:36

Road map for reversal of FDI - conversion of SRPL/JRPL to Non- FOCCS

From: aruna@modiproperties.com <aruna@modiproperties.com>

To: 'Ashish' <ashish@asagarwal.in>

Cc: 'Rajesh Kadakia' <rk@greensglobal.com>, 'Sharad J. Kadakia' <sharad.kadakia@greens.com>, 'Soham Modi' <sohammodi@modiproperties.com>, nirisha@modiproperties.com, rishabh.arora@modiproperties.com, 'Sambasivarao .' <sambasivarao@modiproperties.com>

Ashish,

I tried to list out the steps required to complete the transaction discussed today.

Let me know if it needs correction.

Regards,

Soham Modi

Road map for reversal of FDI – conversion of SRPL/JRPL to Non- FOCCS

Date: 11-8-2023

1. GILLC has purchased 84 shares at the rate of Rs. 9,689/- in Dec, 22 + 3,122 shares @ Rs. 13,012/- in June, 23. These are to be sold to SJK in July/Aug, 23, preferably @ Rs. 13,012/- per share. Approximate capital gain is Rs. 2.79 lakhs.
2. GGILLC has purchased 95 shares at the rate of Rs. 8,346/- in Sept, 22 + 4,864 shares @ Rs. 8,346/- in Nov, 22. These are to be sold to RJK in July/Aug, 23, preferably @ about Rs. 9,000/- per share. Approximate capital gain @ Rs. 9,000/- is Rs. 32.43 lakhs.
3. GILLC and GGILLC need Pan registration for the purpose of payment of tax. For that company registration of the LLCs need certification by Indian consulate in the USA. In the mean time make application with notarized copies by 12/8. SJK to obtain certified copies from Indian consulate ASAP.
4. RJK & SJK need TAN nos for deducting TDS on the above capital gains in favour of GILLC and GGILLC. Application for TAN must be made immediately (before 12/8).
5. Presuming that physical transfer of funds can be done within 30 days of transfer of shares, SH4 shall be filed ASAP for the said transfers. Transfer date to be determined by Ashish Agarwal. Rate of transfer shall be based on valuation report (report form CA will suffice - merchant banker valuation not required). Ashish to help in obtaining valuation reports.
6. Draft valuation report from CA is required before 19/8. Original report may be received at the earliest possible. For that value of Ramky Selenium is required at the rate of about Rs. 6,000/- per sft. Kanaka Rao/Waseem to ensure that report is received before 16/8.

7. SJK to transfer Rs. 4.17 cr i.e., USD 500k immediately through NRO a/c on non-repat basis.
Kusum to check documentation required. Nirisha to complete the formalities. This amount to be transfer back to GILLC.
 8. Once amount is returned to GILLC, RJK to send about USD 540k for purchase of shares through NRO a/c on non-repat basis. This amount to be transferred back to GILLC.
 9. Aarti to advice on filing of FC TRS or similar forms to ensure that SRPL/JRPL do not have any repat funds. Based on the advice funds to be transferred from RJK/SJK accounts in India to GILLC and GGILLC.
-

Alc

From: Aarti Karwande <aarti@hineshdoshi.com>
Sent: 11 March 2023 14:11
To: rishabh.arora .
Cc: nirisha .; Soham Modi; team2
Subject: Re: GVRC - Transfer of Shares and Loans
Attachments: NRI Loan options(HRD Note) 09032023.pdf; NOTINO5(R).pdf

Dear Rishabh,

Please find our replies in red below for GVRC:

1. Entire holdings of RJK & SJK will be transferred to SRPL (Indian Co. owned by RJK) and JRPL (Indian Co. owned by SJK), and a part of shares will be transferred from MPPL to JRPL and SRPL;
2. The final ratio of shareholding amongst SRPL:JRPL:MPPL will be 40:40:20;

HRD Reply: Please confirm the below table which is prepared based on the above 2 points. Once confirmed we shall be able to provide you with the **Form DI applicability**.

Transferor	Existing % in GVRC	Transferee (FOCC as at Feb 23)	% holding (post transfer)
RJK (non- repat basis)	40%	SRPL	40%
SJK (non- repat basis)	40%	JRPL	40%
MPPL (Indian owned Co.)	20%	JRPL	10%
MPPL (Indian owned Co.)		SRPL	10%

3. The consideration amount received by RJK and SJK for sale of shares will be given as Unsecured Loans to SRPL and JRPL;
HRD Reply: We understand that the sale consideration will be credited to NRO Account of SJK & RJK respectively. W.r.t. loan from RJK & SJK from NRO Account to SRPL & JRPL you need to follow the guidelines of Notification 5R. However, these funds can not be used for "Relending". Please refer to the attached note which was shared earlier as well. Necessary ROC compliance to be taken care of as well.

4. SRPL and JRPL will again extend Loans to GVRC; and

HRD Reply: There is no FEMA compliance as loan is out of purview of downstream investment. However, ROC compliance should be taken care of.

As mentioned above, if RJK & SJK extend a deposit from NRO SRPL/JRPL, the funds cannot be used for "Relending". Hence only option available for GVRC to get funds can be directly from RJK & SJK (NRO/NRE Account) by following the guidelines of Notification 5R as stated above.

5. GVRC will issue some securities in future against the loans extended by SRPL and JRPL.

HRD Reply: As per reply mentioned in point 4 above, option of getting loan from SRPL & JRPL is not available. Hence this point will not be applicable.

Also attached herewith note with options available for funding from NRI from his NRO account and Notification 5(R) with highlighted areas applicable in your case for ready reference.

Thanks and regards,

Aarti Karwande

HINESH R DOSHI & CO LLP

Chartered Accountants

Palai Plaza, 3rd Floor, Opp Hotel Pritam, 9 Kohinoor Road, Dadar (East), Mumbai -400014

Direct Line : 022-66008127 / Mobile : 09987929041

Email ID: aarti@hineshdoshi.com / team2@hineshdoshi.com

Video Conferencing IP: 103.204.166.11 / **Website :** <http://www.hineshrdoshicollp.com/>

"A mistake is only a mistake if you don't learn from it."

On Wed, Mar 8, 2023 at 6:43 PM nirisha . <nirisha@modiproperties.com> wrote:

Dear Aarthi Mam,

Please guide us with respect to the loans taken by RJK & SJK and relending to indian companies (FEMA notification 5/2016 – schedule 7) - whether will FEMA Compliances apply or not ?

Regards,

Nirisha Ganga Koya

Chartered Accountant | +91 90142 81118 | nirisha@modiproperties.com

Modi Properties Pvt. Ltd. | www.modiproperties.com

5-4-187/ 3 & 4, M G Road, Secunderabad - 03 | +91 40 66335551

Don't just buy a flat or villa! Buy a great lifestyle!

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On Wednesday, March 8, 2023 at 03:33:14 PM GMT+5:30, rishabh.arora . <rishabh.arora@modiproperties.com> wrote:

Dear Madam,

It was on non-repatriation basis.

Thanks with Regards

Rishabh Arora

Company Secretary
Modi Properties Pvt. Ltd.

On Tuesday, March 7, 2023 at 07:59:11 PM GMT+5:30, Aarti Karwande <aarti@hineshdoshi.com> wrote:

Dear Rishabh,

Noted your email. We can discuss on detail tomorrow as we were closed today.

Further can you please clarify about investment made by RJK and SJK in GVRC earlier - whether on repatriation or non repatriation basis?

Thanks and regards,
Aarti Karwande
Partner

HINESH R DOSHI & CO LLP.,
Chartered Accountants

3rd floor, Palai Plaza, Swami Gyan Jivandas Marg,
Dadar (East), Mumbai - 400014

Board line : 91-22-66008100/8111
Direct Line : 022-66008127
Mobile : 09987929041

Email:
aarti@hineshdoshi.com
info@hineshdoshi.com

Video Conferencing IP: 103.204.166.11

"A mistake is only a mistake if you don't learn from it."

On Tue, 7 Mar, 2023, 14:31 rishabh.arora ., <rishabh.arora@modiproperties.com> wrote:
Dear Aarti Mam,

In GVRC, following are the present shareholders:

- Rajesh Kumar Jayantilal Kadakia - USA Citizen (RJK)
- Sharad Kumar Jayantilal Kadakia - USA Citizen (SJK)
- Modi Properties Private Limited - Indian Company owned by Soham Modi (MPPL)

We are proposing to make the following changes:

1. Entire holdings of RJK & SJK will be transferred to SRPL (Indian Co. owned by RJK) and JRPL (Indian Co. owned by SJK), and a part of shares will be transferred from MPPL to JRPL and SRPL;
2. The final ratio of shareholding amongst SRPL:JRPL:MPPL will be 40:40:20;
3. The consideration amount received by RJK and SJK for sale of shares will be given as Unsecured Loans to SRPL and JRPL;
4. SRPL and JRPL will again extend Loans to GVRC; and
5. GVRC will issue some securities in future against the loans extended by SRPL and JRPL.

Please look into these transactions and suggest us, if any FEMA compliance has to be followed for the transactions.

Thanks with Regards

Rishabh Arora



09.03.2023

GREENS GROUP

OPTIONS FOR BORROWING FOR A COMPANY FROM NRI

PARTICULARS	BORROWING IN INR NCD (FEMA Notn 4)	DEPOSIT (FEMA Notn 5R – Sch 7)	AGAINST NRE/NRO DEPOSIT (of NRI) (FEMA Notn 5R-Sch 1 & 3)
CONDITION	- Only by way of issuing non-convertible debentures (NCD). <i>Such issue of a non-convertible debenture is made by public offer.</i> - Indian company should not be engaged in agriculture or real estate business or a chit fund company.	- Under private arrangement or under a public deposit scheme. - The amount of deposit shall be received by debit to NRO account only. - The amount of the deposit shall not represent inward remittances or transfer of funds from NRE/ FCNR (B) accounts into the NRO account (<i>this means it has to be out of surplus funds in NRO account</i>)	- Bank grant loans to companies in India against the collateral of fixed deposits held in NRE/NRO account of NRI. - The advances are fully secured by the fixed deposits.
CURRENCY	INR	INR	INR
LIMIT	No Cap	No Cap	No Cap
RATE OF INTEREST	Not more than 3% as charged by SBI	Not to exceed the ceiling rate prescribed under the Companies (Acceptance of Deposit) Rules, 2014	As per prevailing Bank rate

PARTICULARS	BORROWING IN INR NCD (FEMA Notn 4)	DEPOSIT (FEMA Notn 5R - Sch 7)	AGAINST NRE/NRO DEPOSIT (of NRI) (FEMA Notn 5R-Sch 1 & 3)
USAGE	• Only for the own business of borrower. • Cannot be used for further investment or further lending to any person or a company.	• Cannot be utilized for following: ○ Relending ○ Undertaking agricultural/ plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.	• For carrying on business activities. • Cannot utilize the amount for following: ○ Relending ○ Undertaking agricultural/ plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.
TIME PERIOD	Minimum 3 years	Not more than 3 years	It can be for Short term or long term as well.
OTHER POINTS	Repatriation basis - % of NCD issued to NRI should not be more than % of FDI limit. Non repatriation basis - Inward remittance from outside India or Debit to NRE/NRO/FCNR(B)/NRNR/NRSR account	Should comply with the provisions of any other law, rules, regulations or orders (Companies Act, 2013)	There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the company to obtain such facilities. The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable to such credit facilities.
REPATRIATION	Only if on Repatriation basis	Non repatriation NRI has option of \$ 1 million scheme for NRO repatriation.	NRE - Repatriation NRO - Non repatriation NRI has option of \$ 1 million scheme for NRO repatriation.
PROCEDURAL COMPLIANCE	Submission of details to RBI	As applicable under Companies Act, 2013	Submission of details to RBI if applicable
AVAILMENT OPTION	CANNOT BE AVAILED BEING PRIVATE LIMITED COMPANY (NCD)	CAN BE AVAILED IN FORM OF "DEPOSIT" (FOR NOT MORE THAN 3 YEARS) BY THE COMPANY	CAN BE AVAILED FROM BANK AGAINST SECURITY DEPOSIT

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

Notification No. FEMA 5(R)/2016-RB

April 01, 2016
(Amended upto November 13, 2019)
(Amended upto July 16, 2019)
(Amended upto November 09, 2018)

Foreign Exchange Management (Deposit) Regulations, 2016

In exercise of the powers conferred by clause (f) of sub-section (3) of section 6, sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of [Notification No. FEMA 5/2000-RB dated May 3, 2000](#), as amended from time to time, the Reserve Bank makes the following regulations relating to deposits between a person resident in India and a person resident outside India, namely:

1. Short title and commencement:-

- i) These regulations may be called the Foreign Exchange Management (Deposit) Regulations, 2016.
- ii) These regulations shall come into force from the date of their publication in the Official Gazette except sub-regulation (2) of Regulation 7. Sub-regulation (2) of Regulation 7 is deemed to have come into force with effect from 21st January, 2016.

2. Definitions:-

In these Regulations, unless the context otherwise requires, -

- i) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- ii) 'Authorised bank' means a bank including a co-operative bank (other than an authorised dealer) authorised by the Reserve Bank to maintain an account of a person resident outside India;
- iii) 'Authorised dealer' means a person authorised as an authorised dealer under subsection (1) of section 10 of the Act;
- iv) 'Deposit' includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person;
- v) 'FCNR (B) account' means a Foreign Currency Non-Resident (Bank) account referred to in clause (ii) of sub-regulation (1) of Regulation 5;
- vi) 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India.
- vii) 'NRE account' means a Non-Resident External account referred to in clause (i) of sub-regulation (1) of Regulation 5;

viii) 'NRO account' means a Non-Resident Ordinary account referred to in clause (iii) of sub-regulation (1) of Regulation 5;

ix) 'Permissible currency' means a foreign currency which is freely convertible;

x) 'Person of Indian Origin (PIO)' means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);
or

b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or

c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: for the purpose of this sub-regulation, the expression 'Person of Indian Origin' includes an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

xi) 'Schedule' means schedule to these Regulations;

xii) 'SNRR account' means a Special Non-Resident Rupee account referred to in sub-regulation (4) of Regulation 5;

xiii) The words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Restrictions on deposits between a person resident in India and a person resident outside India:-

Save as otherwise provided in the Act or Regulations or in rules, directions and orders made or issued under the Act, no person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India:

Provided that the Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, allow a person resident in India to accept or make deposit from or with a person resident outside India.

4. Exemptions:-

Nothing contained in these Regulations shall apply to the following:

1) Deposits held in rupee accounts maintained by foreign diplomatic missions and diplomatic personnel and their family members in India with an authorised dealer.

2) Deposits held by diplomatic missions and diplomatic personnel in special rupee accounts namely Diplomatic Bond Stores Account to facilitate purchases of bonded stocks from firms and companies who have been granted special facilities by customs authorities for import of stores into bond, subject to following conditions:

a) Credits to the account shall be only by way of proceeds of inward remittances received from outside India through banking channels or by a transfer from a foreign currency account in India of the account holder maintained with an authorised dealer in accordance with clause 3 of this Regulation ;

b) All cheque leaves issued to the account holder shall be superscribed as "Diplomatic Bond Stores Account No.";

c) Debits to the accounts shall be for local disbursements, or for payments for purchases of bonded stocks to firms and companies who have been granted special facilities by customs authorities for import of stores into bond;

d) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

3) Deposits held in accounts maintained in foreign currency by diplomatic missions, diplomatic personnel and non-diplomatic staff, who are the nationals of the concerned foreign countries and hold official passport of foreign embassies in India subject to the following conditions:

a) Credits to the account shall be only by way of:-

(i) proceeds of inward remittances received from outside India through banking channels; and

(ii) transfer of funds, from the rupee account of the diplomatic mission in India, which are collected in India as visa fees and credited to such account;

b) Funds held in such account if converted in rupees shall not be converted back into foreign currency;

c) The account may be held in the form of current or term deposit account, and in the case of diplomatic personnel and non-diplomatic staff, may also be held in the form of savings account;

d) The rate of interest on savings or term deposits shall be such as may be determined by the authorised dealer maintaining the account;

e) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

4) Deposits held in accounts maintained in rupees with an authorised dealer by persons resident in Nepal and Bhutan.

5) Deposits held in accounts maintained with an authorised dealer by any multilateral organization and its subsidiary/ affiliate bodies and officials in India of such multilateral organisations, of which India is a member nation.

5. Acceptance of deposits by an authorised dealer/ authorised bank from persons resident outside India:-

1) An authorised dealer in India may accept deposit

i) under the Non-Resident (External) Account Scheme (NRE account), specified in Schedule 1, from a non-resident Indian;

ii) under the Foreign Currency (Non-Resident) Account Banks Scheme, (FCNR(B) account), specified in Schedule 2, from a non-resident Indian;

iii) under the Non-Resident (Ordinary) Account Scheme, (NRO account), specified in Schedule 3, from any person resident outside India;

2) Without prejudice to sub-regulation (1), deposits under NRE and NRO Account Schemes referred to in clauses (i) and (iii) of that sub-regulation, may also be accepted by an authorised bank, in accordance with the provisions contained in the respective Schedules, subject to the conditions prescribed by Reserve Bank in this regard.

3) Without prejudice to sub-regulation (1), deposits under FCNR(B) Account Schemes referred to in clause (ii) of that sub-regulation, may also be accepted by a Regional Rural Bank, in accordance with the provisions contained in the Schedule, subject to the conditions prescribed by Reserve Bank in this regard.

4) Any person resident outside India having a business interest in India may open, hold and maintain with an authorised dealer in India, a Special Non-Resident Rupee Account (SNRR account), specified in Schedule 4.

5) Resident or non-resident acquirers may, subject to the terms and conditions specified in Schedule 5, open, hold and maintain Escrow Account with Authorised Dealers in India

6. Acceptance of deposits by persons other than authorised dealer/ authorised bank:-

1) A company registered under Companies Act, 2013 or a body corporate created under an Act of Parliament or State Legislature shall not accept deposits on repatriation basis from a non-resident Indian or a person of Indian origin. The company may, however, renew the deposits which had been accepted on repatriation basis from an NRI or a PIO subject to terms and conditions mentioned in Schedule 6.

2) A company registered under Companies Act, 2013 or a body corporate, a proprietary concern or a firm in India may accept deposits from a non-resident Indian or a person of Indian origin on non-repatriation basis, subject to the terms and conditions mentioned in Schedule 7.

3)¹

7. Other deposits made or held by authorised dealer:-

1) A deposit made by an authorised dealer with its branch, head office or correspondent outside India, and a deposit made by a branch or correspondent outside India of an authorised dealer, and held in its books in India, shall be governed by the directions issued by the Reserve Bank in this regard from time to time.

2) A shipping or airline company incorporated outside India, may open, hold and maintain a Foreign Currency Account with an authorized dealer for meeting the local expenses in India of such airline or shipping company:

Provided that the credits to such accounts are only by way of freight or passage fare collections in India or by inward remittances through banking channels from its office outside India.

3) An authorised dealer in India, may subject to the directions issued by the Reserve Bank, allow unincorporated joint ventures (UJV) of foreign companies/ entities, with Indian entities, executing a contract in India, to open and maintain non-interest bearing foreign currency account and a SNRR account as specified in schedule 4 for the purpose of undertaking transactions in the ordinary course of its business. The debits and credits in these accounts shall be incidental to the business requirement of the UJV.

Provided that the tenure of the account is concurrent to the tenure of the contract/ period of operation of the UJV.

Provided further that all operations in the account shall be in accordance with the provisions of the Act or the rules or regulations made or the directions issued thereunder.

Note: Opening of accounts by companies/ entities of Pakistan/ Bangladesh ownership/ nationality would require the prior approval of the Reserve Bank

4) An authorised dealer in India, with the prior approval of Reserve Bank, may open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India in terms of an arrangement voluntarily entered into by such person with a person resident in India.

5) ²An Authorized Dealer in India may allow a Foreign Portfolio Investor and a Foreign Venture Capital Investor, both registered with the Securities and Exchange Board of India (SEBI) under the relevant SEBI regulations to open and maintain a non-interest bearing foreign currency account for the purpose of making investment in accordance with Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, as amended from time to time.

¹ Deleted vide [Notification No. FEMA 5\(R\)\(2\)/2019-RB dated July 16, 2019.](#)

² Inserted vide [Notification No. FEMA 5\(R\)\(1\)/2018-RB dated November 09, 2018](#)

8. Nomination:-

Authorised dealers may provide nomination facility in respect of the deposits/ accounts in these regulations maintained by individual account holders.

(R K Moolchandani)
Chief General Manager

SCHEDULE 1
[See Regulation 5(1) (i)]

Non-Resident (External) Rupee Account Scheme – NRE Account

1. Eligibility:

Non-resident Indians (NRIs) and Person of Indian Origin (PIOs) are permitted to open and maintain these accounts with authorised dealers and with banks (including cooperative banks) authorised by the Reserve Bank to maintain such accounts.

The account should be opened by the non-resident account holder himself and not by the holder of the power of attorney in India.

2. Types of accounts:

The accounts may be maintained in any form, e.g. savings, current, recurring or fixed deposit account etc.

3. Permitted Credits:

- a) Proceeds of remittances to India in any permitted currency.
- b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India, provided the authorised dealer/ bank is satisfied that the account holder is still resident outside India, the travellers' cheques/ drafts are standing/ endorsed in the name of the account holder and in the case of travellers' cheques, they were issued outside India.
- c) Proceeds of foreign currency/ bank notes tendered by account holder during his temporary visit to India, provided (i) the amount was declared on a Currency Declaration Form (CDF), where applicable, and (ii) the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.
- d) Transfers from other NRE/ FCNR (B) accounts.
- e) Interest accruing on the funds held in the account.
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India
- g) Maturity or sale proceeds of any permissible investment in India which was originally made by debit to the account holder's NRE/ FCNR (B) account or out of remittances received from outside India through banking channels.

Provided that the investment was made in accordance with the foreign exchange regulations in force at the time of making such investment.

h) Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/ FCNR (B) account of the account holder or by remittance from outside India through banking channels.

i) Refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings / deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/ FCNR(B) account of the account holder or remittance from outside India through banking channels and the authorised dealer is satisfied about the genuineness of the transaction.

j) Any other credit if covered under general or special permission granted by Reserve Bank.

4. Permitted Debits:

a) Local disbursements.

b) Remittances outside India.

c) Transfer to NRE/ FCNR (B) accounts of the account holder or any other person eligible to maintain such account.

d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by the Reserve Bank.

e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

5. Rate of Interest:

Rate of interest applicable to these accounts shall be in accordance with the directions/ instructions issued by Reserve Bank from time to time

6. Loans against security of funds held in the account:

(1) To account holder: Authorised dealers and authorised banks maintaining such accounts are permitted to grant loans in India to the account holder subject to the following conditions:

(a) The loan shall be used for:

i) personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business.

ii) making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies subject to the provisions of the relevant Regulations made under the Act

iii) acquiring flat/ house in India for his own residential use subject to the provisions of the relevant Regulations made under the Act

(b) Repayment shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through banking channels or out of local rupee resources in the NRO account of the borrower.

(2) To third parties: Authorised dealers and authorised banks may grant loans to resident individuals/ firms/ companies in India against the collateral of fixed deposits held in NRE account subject to the following conditions:

i) The loan should be utilised for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business.

ii) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.

iii) The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable to such credit facilities.

(3) ³Loans outside India - Authorised dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business, against the security of funds held in the NRE accounts in India and also agree for remittance of the funds from India, if necessary, for liquidation of the outstanding.

(4) The authorised dealer/ bank should ensure that the advances are fully secured by the fixed deposits and regulations relating to normal margin, interest rate, etc. are complied with.

(5) The loans granted under this paragraph shall be subject to such directions as may be issued by the Reserve Bank from time to time.

(6) The term "loan" shall include all types of fund based/ non-fund based facilities.

7. Change of residential status of the account holder:

NRE accounts should be re-designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts (if the account holder is eligible for maintaining RFC account) at the option of the account holder

³ Inserted by a Corrigendum with effect from April 01, 2016 vide G.S.R 869(E) dated September 8, 2016. Prior to insertion it read as: "Loans outside India - Authorised dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business, against the security of funds held in the NRE accounts in India and also agree for remittance of the funds from India, if necessary, for liquidation of the outstanding."

immediately upon the return of the account holder to India for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.

8. Repatriation of funds to non-resident nominee:

Authorised dealers/ authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

9. Miscellaneous:

(a) Joint accounts – Joint accounts may be permitted to be opened in the following cases:

i) In the names of two or more NRIs and/or PIOs

ii) With resident relative(s) on 'former or survivor' basis. However, the said resident relative shall be eligible to operate the account as a Power of Attorney holder in accordance with the extant instructions during the life time of the account holder.

Explanation – For the purpose of this regulation, 'relative' means relative as defined in section 2(77) of the Companies Act, 2013.

b) Opening of account during temporary visit: An account may be opened in the name of an eligible NRI or PIO during his temporary visit to India against tender of foreign currency travellers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.

c) Operations by Power of Attorney: Authorised dealers/ authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through banking channels. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder may be permitted by the authorised dealers/ banks to operate the account to facilitate such investment. The resident Power of Attorney holder shall not, however, be allowed to repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder nor to transfer funds from the account to another NRE account.

d) Special Series of Cheques: For easy identification and quicker processing of cheques drawn on NRE accounts, authorised dealers/ banks shall issue cheque books containing a special series of cheques to their constituents holding NRE accounts.

e) Temporary overdrawings: Authorised dealers/ authorised banks may at their discretion/ commercial judgement allow for a period of not more than two weeks, overdrawings in NRE savings bank accounts, up to a limit of Rs.50,000

subject to the condition that such overdrawings together with the interest payable thereon are cleared/ repaid within the said period of two weeks, out of inward remittances through banking channels or by transfer of funds from other NRE/ FCNR(B) accounts.

f) Remittances abroad by Resident nominee: Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.

g) Tax Exemption: Income from interest on balances standing to the credit of NRE Accounts is exempt from Income Tax. Likewise balances held in such accounts are exempt from wealth tax.

h) Reporting: The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

SCHEDULE 2
[See Regulation 5(1) (ii)]

FOREIGN CURRENCY (NON-RESIDENT) ACCOUNT (BANKS) SCHEME – FCNR (B) Account

1. Eligibility:

- (a) NRIs and PIOs are eligible to open and maintain these accounts with an authorised dealer.
- (b) These accounts may be opened with funds remitted from outside India through banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with an authorised dealer in India or funds which are of repatriable nature in terms of the regulations made by Reserve Bank. Accounts may also be opened by transfer of funds from existing NRE/ FCNR (B) accounts.
- (c) Remittances from outside India for opening of or crediting to these accounts should be made in the designated currency in which the account is desired to be opened/ maintained.

Without prejudice to this, if the remittance is received in a currency other than the designated currency (including funds received in rupees by debit to the account of a non-resident bank), it should be converted into the latter currency by the authorised dealer at the risk and cost of the remitter and account should be opened/ credited in only the designated currency.

- (d) In case the depositor with any currency other than designated currency desires to place a deposit in these accounts, authorised dealers may undertake with the depositor a fully covered swap in that currency against the desired designated currency. Such a swap may also be done between two designated currencies.

2. Designated Currencies: Deposit of funds in the account may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.

3. Type of account:

These accounts may be opened only in the form of term deposit with maturity of such period as may be specified by the Reserve Bank from time to time.

4. Rate of Interest:

The rate of interest on funds held in these deposit accounts will be in accordance with the directives issued by the Reserve Bank from time to time.

5. Permissible Debits/ Credits:

All debits/ credits permissible in respect of NRE accounts as specified in Schedule 1 shall be permissible in respect of these accounts also.

6. Rate for Conversion of Rupees into Designated Currencies and vice versa:

- i) Remittances received in Indian rupees for opening these accounts shall be converted by the authorised dealer into the designated foreign currency at the clean T.T. selling rate for that currency ruling on the date of conversion.
- ii) For the purpose of payment in rupees, funds held in these accounts shall be converted into rupees at the authorised dealer's clean T.T. buying rate for the concerned currency ruling on the date of withdrawal.

7. Inland Movement of Funds:

Any inland movement of funds for the purpose of opening these accounts as well as for repatriation outside India of balances held in these accounts will be free of inland exchange or commission for the non-resident depositors. The Authorised dealer receiving foreign currency remittances in these accounts will also, on request, pass on the foreign currency to another authorised dealer if the account has to be opened with the latter, at no extra cost to the remitter.

8. Manner of Payment of Interest:

- (i) Interest on balances held in these accounts may be paid half-yearly or on an annual basis as desired by the depositor.
- (ii) Interest may be credited to a new FCNR (B) account or an existing/ new NRE/ NRO account in the name of the account holder, at his option.

9. Loans/ overdrafts against security of funds held in the account:

- (1) The terms and conditions as applicable to NRE deposits (cf. Schedule 1) in respect of loans and overdrafts in India to depositor and to third parties as also loans outside India against security of deposits, shall apply mutatis mutandis to FCNR(B) deposits.
- (2) The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.

10. Change of residential status of the account holder:

When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR (B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the accountholder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the accountholder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

11. Joint account, repatriation of balances, etc.:

(1) Terms and conditions as applicable to NRE accounts (cf. Schedule 1) in respect of joint accounts, repatriation of funds, opening account during temporary visit, operation by power of attorney, loans/ overdrafts against security of funds held in accounts, shall apply mutatis mutandis to FCNR (B) accounts.

(2) Authorised dealer may permit remittance of the maturity proceeds of FCNR (B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the authorised dealer is satisfied about the bona fides of the transaction.

12. Reporting:

The transactions in these accounts shall be reported to Reserve Bank in accordance with the directions issued by it from time to time.

13. Other features:

(a) Reserve Bank will not provide exchange rate guarantee to authorised dealers for deposits of any maturity in these accounts.

(b) Lending of resources mobilised by authorised dealers under these accounts are not subject to any interest rate stipulations.

SCHEDULE 3
[See Regulation 5(1) (iii)]

NON-RESIDENT ORDINARY RUPEE ACCOUNT SCHEME – NRO Account

1. Eligibility

- (a) Any person resident outside India may open NRO account with an authorised dealer or an authorised bank for the purpose of putting through bona fide transactions in rupees not involving any violation of the provisions of the Act, rules and regulations made thereunder.
- (b) The operations on the accounts should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.
- (c) At the time of opening of the account, the account holder should furnish an undertaking to the authorised dealer/ authorised bank with whom the account is maintained that in cases of debits to the account for the purpose of investment in India and credits representing sale proceeds of investments, he will ensure that such investments/ disinvestments will be in accordance with the regulations made by Reserve Bank in this regard.

NOTES:

- A. Opening of accounts by individuals/ entities of Pakistan nationality/ ownership requires approval of Reserve Bank.
- B. Opening of accounts by entities of Bangladesh ownership requires approval of Reserve Bank.
- C. Opening of accounts by individual/s of Bangladesh nationality may be allowed by authorised dealer or authorised bank, subject to satisfying itself that the individual/s hold a valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/ Foreigner Regional Registration Office (FRRO) concerned;
- D. Post Offices in India may maintain savings bank accounts in the names of persons resident outside India and allow operations on these accounts subject to the same terms and conditions as are applicable to NRO accounts maintained with an authorised dealer/ authorised bank.
- E. ⁴A person being a citizen of, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government is permitted to open with an authorized dealer only one NRO Account. The said NRO account shall be converted to a resident account once the person becomes a citizen of India within the meaning of the Citizenship Act, 1955. Such accounts can be opened by Authorised Dealers only,

⁴ Inserted vide [Notification No. FEMA 5\(R\)\(1\)/2018-RB dated November 09, 2018](#)

F. ⁵ A person being a citizen of Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has applied for a Long Term Visa (LTV) which is under consideration of the Central Government is permitted to open with an authorised dealer only one NRO Account which will be opened for a period of six months and may be renewed at six monthly intervals subject to the condition that the individual holds a valid visa and valid residential permit issued by Foreigner Registration Office (FRO) / Foreigner Regional Registration Office (FRRO) concerned. Such accounts can be opened by Authorised Dealers only,

2. Types of Accounts

NRO accounts may be opened/ maintained in the form of current, savings, recurring or fixed deposit accounts. The requirements laid down in the directives issued by Reserve Bank in regard to resident accounts shall apply to NRO accounts.

3. Permissible Credits/ Debits

(A) Credits

- (i) Proceeds of remittances received in any permitted currency from outside India through banking channels or any permitted currency tendered by the account-holder during his temporary visit to India or transfers from rupee accounts of non-resident banks.
- (ii) Legitimate dues in India of the account holder.
- (iii) Transfers from other NRO accounts.
- (iv) Any amount received by the account holder in accordance with the rules or regulations made under the Act

(B) Debits

- (i) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by the Reserve Bank.
- (ii) Remittance outside India of current income in India of the account holder net of applicable taxes.
- (iii) Transfers to other NRO accounts.
- (iv) Settlement of charges on International Credit Cards issued by authorised dealer banks in India to NRIs or PIOs, subject to the limits for repatriation of balances held in NRO accounts specified in regulation 4(2) of Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

4. Remittance of funds held in NRO accounts

⁵ Inserted vide [Notification No. FEMA 5\(R\)\(1\)/2018-RB dated November 09, 2018](#)

Balances in NRO accounts are not eligible for remittance outside India without the general or specific approval of Reserve Bank. Funds received by way of remittances from outside India in foreign exchange which have not lost their identity as remittable funds will only be considered by Reserve Bank for remittance outside India. Where an account (current/ savings) is opened by a foreign tourist visiting India, with funds remitted from outside India in a specified manner or by sale of foreign exchange brought by him to India, authorised dealers may convert the balance in the account at the time of departure of the tourist from India to foreign currency for payment to the account holder provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

5. Grant of Loans/ Overdrafts

A. To Account holders

(i) Loans to non-resident account holders may be granted in rupees against the security of fixed deposits subject to usual norms as are applicable to resident accounts, for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activity or for investment in real estate business.

(ii) Authorised dealer/ bank may permit overdraft in the account of the account holder subject to its commercial judgement and compliance with the interest rate etc. directives.

B. To Third parties

Loans/ overdrafts to resident individuals/ firms/ companies in India may be granted against the security of deposits held in NRO accounts, subject to the following terms and conditions.

(i) The loans shall be utilised only for meeting borrower's personal requirements and/ or business purpose and not for carrying on agricultural/ plantation activities or real estate business, or for relending.

(ii) Regulations relating to margin and rate of interest as stipulated by Reserve Bank from time to time shall be complied with.

(iii) The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable for such loans/ facilities.

6. Treatment of Loans/ Overdrafts in the event of change in the resident status of the borrower

In case of person who had availed of loan or overdraft facilities while resident in India and who subsequently becomes a person resident outside India, the authorised dealer may at their discretion and commercial judgement allow continuance of the loan/ overdraft facilities. In such cases, payment of interest and repayment of loan may be made by inward remittance or out of legitimate resources in India of the person concerned.

7. Joint Accounts

The accounts may be held jointly with residents on 'former or survivor' basis.

NRIs and/or PIOs may hold NRO account jointly with other NRIs and/or PIOs.

8. Operations by Power of Attorney

Authorised dealers/ authorized banks may allow operations on an NRO account in terms of a Power of Attorney, provided such operations are restricted to (i) all local payments in rupees including payments for eligible investments subject to compliance with relevant regulations made by the Reserve Bank; and (ii) remittance outside India of current income in India of the non-resident individual account holder, net of applicable taxes. The resident Power of Attorney holder shall not repatriate outside India funds held in the account under any circumstances other than to the non-resident individual account holder himself nor shall make payment by way of gift to a resident on behalf of the non-resident account holder nor transfer funds from the account to another NRO account.

Any remittance outside India shall be within the ceiling as may be prescribed by the Bank from time to time and subject to tax compliance.

9. Change of Resident Status of Account holder

(a) From Resident to Non-resident

When a person resident in India leaves India for a country (other than Nepal or Bhutan) for taking up employment, or for carrying on business or vocation outside India or for any other purpose indicating his intention to stay outside India for an uncertain period, his existing account should be designated as a Non-Resident (Ordinary) account.

(b) From Non-resident to Resident

NRO accounts may be designated as resident rupee accounts on the return of the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

10. Payment of funds to Non-resident Nominee

The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India.

11. Reporting of transactions

(i) The transaction in the account which may appear to represent reimbursement in rupees against foreign exchange made available to a person resident in India other than authorised dealer, as well as any other transaction of suspicious nature, should be reported to Reserve Bank.

(ii) The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

(iii) The accounts opened by an authorised dealer or an authorised bank in respect of individual/s of Bangladesh nationality shall be reported by the authorised dealer/ authorised bank branch to its Head Office and the Head Office of such authorised dealer/ authorised bank shall forward a quarterly report containing details of Name of the Individual(s), Passport Number, Issuing Country/State, Name of the FRO/ FRRO, Date of issue of Residential Permit and validity thereof, to the Ministry of Home Affairs (Foreigners Division) on Quarterly basis".

Explanation: 'Quarterly basis' means, quarter as at end of March/ June/ September and December of every year.

SCHEDULE 4 [See Regulation 5(4)]

Special Non-Resident Rupee Account - SNRR account

1. ⁶Any person resident outside India, having a business interest in India, may open Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees, not involving any violation of the provisions of the Act, rules and regulations made thereunder. The business interest, apart from generic business interest, shall include the following INR transactions, namely, :-

- i. Investments made in India in accordance with Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated October 17, 2019 and Foreign Exchange Management (Debt Instruments) Regulations, 2019 notified vide notification no. FEMA 396/2019-RB dated October 17, 2019, as applicable, as amended from time to time;

- ii. Import of goods and services in accordance with Section 5 of the Foreign Exchange Management Act 1999 (42 of 1999), read with Notification No. G.S.R. 381(E) dated May 3, 2000, viz., Foreign Exchange Management (Current Account Transaction) Rules, 2000, as amended from time to time;

- iii. Export of goods and services in accordance with Section 7 of the Foreign Exchange Management Act 1999 (42 of 1999), read with Notification No. G.S.R. 381(E) dated May 3, 2000, viz., Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time, and further read with FEMA Notification No.23(R)/2015-RB dated January 12, 2016, as amended from time to time;

- iv. Trade credit transactions and lending under External Commercial Borrowings (ECB) framework in accordance with Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, as amended from time to time; and

- v. Business related transactions outside International Financial Service Centre (IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amount from sale of scrap, government incentives in INR, etc. The account will be maintained with bank in India (outside IFSC).

⁶ Amended vide [Notification No. FEMA 5\(R\)\(3\)/2019-RB dated November 13, 2019](#). Prior to amendment, it read as "Any person resident outside India, having a business interest in India, may open Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees, not involving any violation of the provisions of the Act, rules and regulations made thereunder."

2. ⁷The SNRR account shall carry the nomenclature of the specific business for which it is in operation. Indian bank may, at its discretion, maintain separate SNRR Account for each category of transactions or a single SNRR Account for a person resident outside India engaged in multiple categories of transactions provided it is able to identify/ segregate and account them category-wise.
3. The operations in the SNRR account ⁸shall not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.
4. The SNRR account shall not bear any interest.
5. The debits and credits in the SNRR account ⁸shall be specific/ incidental to the business proposed to be done by the account holder.
6. Authorised dealers ⁸shall ensure that the balances are commensurate with the business operations of the account holder.
7. All the operations in the SNRR account should be in accordance with the provisions of the Act, rules and regulations made thereunder.
8. ⁹ The tenure of the SNRR account shall be concurrent to the tenure of the contract / period of operation / the business of the account holder and in no case shall exceed seven years. Approval of the Reserve Bank shall be obtained in cases requiring renewal:

Provided the restriction of seven years shall not be applicable to SNRR accounts opened for the purposes stated at sub. paragraphs i to v of paragraph 1 of this schedule.

9. The balances in the SNRR account shall be eligible for repatriation.
10. Transfers from any NRO account to the SNRR account are prohibited.
11. All transactions in the SNRR account will be subject to payment of applicable taxes in India.
12. SNRR account may be designated as resident rupee account on the account holder becoming a resident.

⁷ Amended vide [Notification No. FEMA 5\(R\)\(3\)/2019-RB dated November 13, 2019](#). Prior to amendment, it read as "The SNRR account should carry the nomenclature of the specific business for which it is in operation".

⁸ Amended vide [Notification No. FEMA 5\(R\)\(3\)/2019-RB dated November 13, 2019](#). Prior to amendment, it read as "should"

⁹ Amended vide [Notification No. FEMA 5\(R\)\(3\)/2019-RB dated November 13, 2019](#). Prior to amendment, it read as *"The tenure of the SNRR account should be concurrent to the tenure of the contract / period of operation / the business of the account holder and in no case should exceed seven years. Approval of the Reserve Bank shall be obtained in cases requiring renewal: Provided the restriction of seven years shall not be applicable to SNRR accounts opened by a person resident outside India for the purpose of making investment in India in accordance with Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017, as amended from time to time."*

**Amended vide [Notification No. FEMA 5\(R\)\(1\)/2018-RB dated November 09, 2018](#). Prior to amendment, it read as "The tenure of the SNRR account should be concurrent to the tenure of the contract/period of operation/ the business of the account holder and in no case should exceed seven years. No operations are permissible in the account after seven years from the date of opening of the account."*

13. ¹⁰The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO/NRE account of the nominee with an authorised dealer/ authorised bank in India or by remittance through normal banking channels.
14. The transactions in the SNRR accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.
15. Opening of SNRR accounts by Pakistan and Bangladesh nationals and entities incorporated in Pakistan and Bangladesh requires prior approval of Reserve Bank.

¹⁰ Amended vide [Notification No. FEMA 5\(R\)\(3\)/2019-RB dated November 13, 2019](#). Prior to amendment, it read as "The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India".

“Schedule 5
(See Regulation 5(5))

Terms and conditions for opening of Escrow Account

An Escrow account in INR can be opened jointly and severally with an Authorised Dealer in India as an Escrow Agent in the following cases subject to the terms and conditions specified in this schedule.

1. By non-resident corporates for acquisition/ transfer of capital instruments/convertible notes through open offers/ delisting/ exit offers.

a. Permitted Credits in the Escrow account are:

i. Foreign Inward remittance through banking channels

ii. by way of a guarantee issued by an authorised dealer bank subject to terms and conditions as specified in the Foreign Exchange Management (Guarantee) Regulations 2000, as amended from time to time.

b. Permitted debits in the Escrow account are:

i. As per SEBI (SAST) Regulations or any other regulations issued by the Security Exchange Board of India (SEBI).

c. The resident mandatee empowered by the overseas acquirer for this purpose, may operate the Escrow account in accordance with SEBI (SAST) Regulations or any other regulations issued by the SEBI.

d. The Escrow account shall be closed immediately after completing the requirements as outlined above.

2. By resident and non-resident acquirers for acquisition/ transfer of capital instruments/convertible notes

a. Permitted Credits in the Escrow account are:

i. Foreign Inward remittance through banking channels;

ii. Receipt of rupee consideration through banking channels by the resident acquirer of capital instruments/convertible notes who proposes to acquire from non-resident holders by way of transfer.

iii. by way of a guarantee issued by an authorised dealer bank subject to terms and conditions as specified in the Foreign Exchange Management (Guarantee) Regulations 2000, as amended from time to time.

b. Permitted debits in the Escrow account are:

¹¹ Substituted vide [Notification No. FEMA 5\(R\)\(1\)/2018-RB dated November 09, 2018.](#)

- i. Remittance of consideration for issue/ transfer of capital instruments/convertible notes directly into the bank account of the beneficiary (issuer in India or transferor of capital instruments/convertible notes in India or abroad);
 - ii. Remittance of consideration for refund to the initial remitter of funds in case of failure/ non-materialisation of FDI transaction for which the Escrow account was opened.
 - c. The securities kept/ linked with the Escrow account may be linked with demat account maintained with SEBI authorised Depository Participants as Escrow agents.
 - d. The Escrow account shall remain operational for a maximum period of six months only and the account shall be closed immediately after completing the requirements as outlined above or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.
 - e. Notwithstanding what has been stated in paragraph d. above, in case of transfer of capital instruments between a resident buyer and a non-resident seller or vice-versa, if so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement.
3. Acquisition/ transfer shall be in accordance with the provisions of Foreign Exchange Management (Transfer or Issue of Security by a person resident Outside India) Regulation 2017, as amended from time to time and Security Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 [SEBI (SAST) Regulations] or other relevant regulations issued by the SEBI.
 4. The Escrow account shall be non-interest bearing.
 5. No fund or non-fund based facilities would be permitted against the balances in the Escrow account.
 6. Requirement of compliance with KYC guidelines issued by the Reserve Bank shall rest with the Authorised Dealer.
 7. Balance in the Escrow account, if any, may be repatriated at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the capital instruments/convertible notes), after all the formalities in respect of the said acquisition are completed.
 8. In cases, where proposed acquisition/ transfer does not materialise, the authorised dealer may allow repatriation/ refund of the entire amount lying to the credit of the Escrow account on being satisfied with the bonafides of such remittances.
 9. For the purpose of FDI reporting, date of transfer of funds into the bank account of the issuer or transferor of capital instruments/convertible notes, as the case may be, shall be the relevant date of remittance.

SCHEDULE 6 [See Regulation 6(1)]

Acceptance of deposits by a company incorporated in India (including a non-banking finance company registered with Reserve Bank) on repatriation basis from a Non-resident Indian (NRI) or a Person of Indian origin (PIO)

A company incorporated in India (including a non-banking finance company registered with the Reserve Bank) may accept deposits from NRIs or PIOs, on repatriation basis subject to the following conditions.

- i) The deposits are received under a public deposit scheme.
- ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- iii) The amount representing the deposit is received by inward remittance from outside India through banking channels or by debit to the NRE or FCNR (B) Account maintained with an authorised dealer/ authorised bank in India.
- iv) If the deposit accepting company is a non-banking finance company, the rate of interest payable on deposits shall be in conformity with the guidelines/ directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 2014.
- v) The maturity period of deposits shall not exceed 3 years.
- vi) The company accepting the deposits shall comply with the provisions of any other law, rules, regulations, orders issued by the Government of India or any other competent authority, as are applicable to it in regard to acceptance of deposits.
- vii) The amount of aggregate deposits accepted by the company shall not exceed 35% of its net owned funds.
- viii) The payment of interest net of taxes may be made by the company to the depositor by remittance through an authorised dealer or by credit to the depositor's NRE/ FCNR(B)/ NRO/ account as desired by him.

ix) The amount of deposits so collected shall not be utilised by the company for re-lending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.

x) The repayment of the deposit may be made by the company to the depositor by remittance from India through an authorised dealer or by credit to the depositor's NRE/ FCNR(B) account maintained with an authorised dealer in India, provided the depositor continues to be a non resident at the time of repayment. While applying to the authorised dealer for remittance of maturity proceeds of deposit or credit thereof to NRE/ FCNR(B) account, the company should certify that the amount of deposit was received either by inward remittance from outside India through banking channels or by debit to the depositor's NRE/ FCNR(B) account, as the case may be.

xi) The amount representing repayment of deposit may also be credited to the depositor's NRO account, at the depositor's option.

SCHEDULE 7 [See Regulation 6(2)]

Acceptance of deposits by Indian proprietorship concern/firm or company (including non-banking finance company registered with Reserve Bank) on non-repatriation basis from Non-resident Indian (NRI) or a Person of Indian Origin (PIO)

A proprietorship concern or a firm in India and a company incorporated in India (including a non-banking finance company registered with Reserve Bank) may accept deposits on non-repatriation basis from NRIs or PIOs subject to the following conditions:

- i) In the case of a company, the deposits may be accepted either under private arrangement or under a public deposit scheme.
- ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- iii) The maturity period of deposit shall not exceed 3 years.
- iv) If the deposit accepting company is a non-banking finance company the rate of interest payable on deposits shall be in conformity with the guidelines/ directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 2014.
- v) The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/ FCNR (B) accounts into the NRO account.
- vi) The proprietorship concern/ firm/ company accepting the deposit should comply with the provisions of any other law, rules, regulations or orders made by Government or any other competent authority, as are applicable to it in regard to acceptance of deposits.
- vii) The proprietorship concern, firm or company accepting the deposit shall not utilise the amount of deposits for relending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.
- viii) The amount of deposits accepted shall not be allowed to be repatriated outside India.

Foot Note: The Principal Regulations were published in the Official Gazette vide No. G.S.R. 389(E) dated April 01, 2016 and subsequently amended as under
G.S.R.1093 (E) dated 09.11.2018
[G.S.R. 498 \(E\) dated 16.07.2019](#)
[No. FEMA 5\(R\)/\(3\)/2019-RB dated November 13, 2019](#)

9. Downstream Investment

The underlying principle of the downstream investment guidelines is that "what cannot be done directly shall not be done indirectly". Accordingly, downstream investments which are treated as indirect foreign investment are subject to the entry routes, sectoral caps or the investment limits, as the case may be, pricing guidelines, and the attendant conditionalities for such investment as laid down in the NDI Rules.

9.1 Definitions

9.1.1 'Ownership of an Indian company' is the beneficial holding of more than 50 percent of the equity instruments of such company.

9.1.2 'Ownership of an LLP' is the contribution of more than 50 percent in its capital and having majority profit share.

9.1.3 'Company owned by resident Indian citizens' is an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

9.1.4 An 'LLP owned by resident Indian citizens' is an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens.

9.1.5 'Company owned by persons resident outside India' is an Indian company whose ownership is vested in persons resident outside India.

9.1.6 An 'LLP owned by persons resident outside India' is an LLP whose ownership is vested with persons resident outside India.

9.1.7 'Control' of a company is the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

9.1.8 For the purpose of LLP, 'Control' is the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.

9.1.9 'Company controlled by resident Indian citizens' is an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

9.1.10 An 'LLP controlled by resident Indian citizens' is an LLP, the control of which is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens.

9.1.11 'Company controlled by persons resident outside India' is an Indian company the control of which is vested with persons resident outside India.

9.1.12 An 'LLP controlled by persons resident outside India' is an LLP the control of which is vested with persons resident outside India.

9.1.13 'Downstream Investment' is investment made by an Indian entity which has received foreign investment or an Investment Vehicle in the equity instruments or the capital, as the case may be, of another Indian entity.

9.1.14 'Holding Company' will have the same meaning as defined in Companies Act, 2013.

9.1.15 'Indirect Foreign Investment' is downstream investment received by an Indian entity from:

- a. another Indian entity (IE) which has received foreign investment and which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India; or
- b. an investment vehicle whose sponsor or manager or investment manager is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India. If sponsor or manager or investment manager is organised in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

[Explanation 1: For cases where the original investment made in the investee entity was made as a resident but later the investor entity becomes owned and/or controlled by persons resident outside, the same shall be reckoned as downstream investment from the date on which the investor entity is owned and/or controlled by persons resident outside India. Such

downstream investment shall be in compliance with the applicable entry route and sectoral cap]

[Explanation 2: The NRI investments on non-repatriation basis is treated as deemed domestic investment. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment.

9.1.16 'Total Foreign Investment' is the sum of foreign investment and indirect foreign investment which will be reckoned on a fully diluted basis;

9.1.17 'Strategic downstream investment' means downstream investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.

9.2 Prohibition

9.2.1 No person resident in India other than an Indian entity can receive Indirect Foreign Investment.

9.3 Conditions for downstream investment that is treated as Indirect Foreign Investment for the investee Indian Entity

9.3.1 An Indian entity which has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines and other FDI linked performance conditions as applicable for foreign investment.

9.3.2 Downstream investment by an LLP which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

9.3.3 Indirect foreign Investment is permitted in an LLP in sectors where foreign investment is allowed 100% under automatic route and there are no FDI linked performance conditions.

9.3.4 If the sponsors/ managers/ investment managers of an investment vehicle are individuals, for the downstream investment made by such investment vehicle not to be considered as Indirect Foreign Investment for the investee, the sponsors/ managers/ investment managers of the investment vehicle should be resident Indian citizens. In case the sponsor/ manager/ investment manager is organised in any other form, SEBI will determine whether it is foreign owned and/ or controlled or not.

9.3.5 The downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity should have the approval of the Board of Directors as also a Shareholders' Agreement, if any, of the investing Indian entity.

9.3.6 The Indian entity making the downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity is required to bring in the requisite funds from abroad and not use funds borrowed in the domestic markets. Subscription by persons resident outside India to non-convertible debentures issued by an Indian company will not be construed as funds borrowed/ leveraged in the domestic market. However, raising of debt and its utilisation will have to comply with the Act and the rules or regulations made thereunder.

9.3.7 Downstream investments which is treated as Indirect Foreign Investment for the investee Indian entity can be made through internal accruals. For this purpose, internal accruals will mean profits transferred to reserve account after payment of taxes.

9.3.8 When a company which does not have any operations makes downstream investment which is treated as Indirect Foreign Investment for the investee Indian entity or commences business(s), it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

9.4 Downstream investment/s under Corporate Debt Restructuring (CDR), mechanism

9.4.1 With effect from July 31, 2012, downstream investment/s made by a banking company (as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, incorporated in India) which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, will not be considered as indirect foreign investment.

9.4.2 Strategic downstream investment by a banking company referred to at 9.4.1 above will be considered as indirect foreign investment for the investee company.

9.5. Guidelines for calculation of total foreign investment in Indian companies

9.5.1 Any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment.

9.5.2 FCCBs and DRs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.

9.5.3 The methodology for calculating total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.

9.5.4 For the purpose of downstream investment, the portfolio investment held as on March 31 of the previous financial year in the Indian company making the downstream investment will be considered for computing the total foreign investment of the investee Indian entity.

9.5.5 The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment

9.6 Conditions for exit

9.6.1 **Equity instrument** of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to:

- a. a person resident outside India, subject to reporting requirements in Form FCTRS. However, pricing guidelines will not apply for such a transfer.
- b. a person resident in India subject to adherence to pricing guidelines.
- c. an Indian company with foreign investment and not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India. Pricing and reporting guidelines will not apply.

9.6.2 The instructions at 9.6.1 above will be construed accordingly for an LLP.

9.7 Responsibility for compliance

9.7.1 The first level Indian company making downstream investment will be responsible for ensuring compliance with the provisions of these **rules** for the downstream investment made by it at second level and so on and so forth. Such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis. Such compliance of FEMA provisions shall be mentioned in the Director's report in the Annual Report of the Indian company.

9.7.2 In case the statutory auditor has given a qualified report, the same should be immediately brought to the notice of the Regional Office of the **RBI** in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

9.7.3 The instructions at 9.7.1 above will be construed accordingly for an LLP

9.8 Applicability of downstream investment guidelines

9.8.1 Downstream investment which is treated as indirect foreign investment for the investee Indian entity made prior to February 13, 2009 would not require any modification to conform to **NDI Rules**. All other investments, after the said date, would come under its ambit.

9.8.2 Downstream investments which is treated as indirect foreign investment for the investee Indian entity made between February 13, 2009 and June 21, 2013 which was not in conformity with the downstream investment guidelines should have been intimated to the **RBI** by October 3, 2013 for treating such cases as compliant with **NDI Rules**.

routes, sectoral caps or the investment limits, as the case may be, pricing guidelines, and the attendant conditionalities for such investment as laid down in the NDI Rules.

9.1 Definitions

9.1.1 'Ownership of an Indian company' is the beneficial holding of more than 50 percent of the equity instruments of such company.

9.1.2 'Ownership of an LLP' is the contribution of more than 50 percent in its capital and having majority profit share.

9.1.3 'Company owned by resident Indian citizens' is an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

9.1.4 An 'LLP owned by resident Indian citizens' is an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens.

9.1.5 'Company owned by persons resident outside India' is an Indian company whose ownership is vested in persons resident outside India.

9.1.6 An 'LLP owned by persons resident outside India' is an LLP whose ownership is vested with persons resident outside India.

9.1.7 'Control' of a company is the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

9.1.8 For the purpose of LLP, 'Control' is the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.

9.1.9 'Company controlled by resident Indian citizens' is an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens.

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9.1.13 'Downstream Investment' is investment made by an Indian entity which has received foreign investment or an Investment Vehicle in the equity instruments or the capital, as the case may be, of another Indian entity.

9.1.14 'Holding Company' will have the same meaning as defined in Companies Act, 2013.

9.1.15 'Indirect Foreign Investment' is downstream investment received by an Indian entity from:

- (a) another Indian entity (IE) which has received foreign investment and which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India; or
- (b) an investment vehicle whose sponsor or manager or investment manager is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India. If sponsor or manager or investment manager is organised in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

[Explanation 1: For cases where the original investment made in the investee entity was made as a resident but later the investor entity becomes owned and/or controlled by persons resident outside, the same shall be reckoned as downstream investment from the date on which the investor entity is owned and/or controlled by persons resident outside India. Such downstream investment shall be in compliance with the applicable entry route and sectoral cap]

[Explanation 2: The NRI investments on non-repatriation basis is treated as deemed domestic investment. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment.

9.1.16 'Total Foreign Investment' is the sum of foreign investment and indirect foreign investment which will be reckoned on a fully diluted basis;

9.1.17 'Strategic downstream investment' means downstream investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.

9.2 Prohibition

9.2.1 No person resident in India other than an Indian entity can receive Indirect Foreign Investment.

9.3 Conditions for downstream investment that is treated as Indirect Foreign Investment for the investee Indian Entity

9.3.1 An Indian entity which has received indirect foreign investment is required to comply with the entry route, sectoral caps, pricing guidelines and other FDI linked performance conditions as applicable for foreign investment.

9.3.2 Downstream investment by an LLP which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors

where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

9.3.3 Indirect foreign Investment is permitted in an LLP in sectors where foreign investment is allowed 100% under automatic route and there are no FDI linked performance conditions.

9.3.4 If the sponsors/ managers/ investment managers of an investment vehicle are individuals, for the downstream investment made by such investment vehicle not to be considered as Indirect Foreign Investment for the investee, the sponsors/ managers/ investment managers of the investment vehicle should be resident Indian citizens. In case the sponsor/ manager/ investment manager is organised in any other form, SEBI will determine whether it is foreign owned and/ or controlled or not.

9.3.5 The downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity should have the approval of the Board of Directors as also a Shareholders' Agreement, if any, of the investing Indian entity.

9.3.6 The Indian entity making the downstream investment that is treated as Indirect Foreign Investment for the investee Indian entity is required to bring in the requisite funds from abroad and not use funds borrowed in the domestic markets. Subscription by persons resident outside India to non-convertible debentures issued by an Indian company will not be construed as funds borrowed/ leveraged in the domestic market. However, raising of debt and its utilisation will have to comply with the Act and the rules or regulations made thereunder.

9.3.7 Downstream investments which is treated as Indirect Foreign Investment for the investee Indian entity can be made through internal accruals. For this purpose, internal accruals will mean profits transferred to reserve account after payment of taxes.

9.3.8 When a company which does not have any operations makes downstream investment which is treated as Indirect Foreign Investment for the investee Indian entity or commences business(s), it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

9.4 Downstream investment/s under Corporate Debt Restructuring (CDR), mechanism

9.4.1 With effect from July 31, 2012, downstream investment/s made by a banking company (as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, incorporated in India) which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, will not be considered as indirect foreign investment.

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9.5.2 FCCBs and DRs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.

9.5.3 The methodology for calculating total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.

9.5.4 For the purpose of downstream investment, the portfolio investment held as on March 31 of the previous financial year in the Indian company making the downstream investment will be considered for computing the total foreign investment of the investee Indian entity.

9.5.5 The indirect foreign investment received by a wholly owned subsidiary of an Indian company will be limited to the total foreign investment received by the company making the downstream investment

9.6 Conditions for exit

9.6.1 Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to:

- (a) a person resident outside India, subject to reporting requirements in Form FCTRS. However, pricing guidelines will not apply for such a transfer.
- (b) a person resident in India subject to adherence to pricing guidelines.
- (c) an Indian company with foreign investment and not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India. Pricing and reporting guidelines will not apply.

9.6.2 The instructions at 9.6.1 above will be construed accordingly for an LLP.

9.7 Responsibility for compliance

9.7.1 The first level Indian company making downstream investment will be responsible for ensuring compliance with the provisions of these rules for the downstream investment made by it at second level and so on and so forth. Such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis. Such compliance of FEMA provisions shall be mentioned in the Director's report in the Annual Report of the Indian company.

9.7.2 In case the statutory auditor has given a qualified report, the same should be immediately brought to the notice of the Regional Office of the RBI in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

9.7.3 The instructions at 9.7.1 above will be construed accordingly for an LLP

9.8 Applicability of downstream investment guidelines

9.8.1 Downstream investment which is treated as indirect foreign investment for the investee Indian entity made prior to February 13, 2009 would not require any modification to conform to NDI Rules. All other investments, after the said date, would come under its ambit.

9.8.2 Downstream investments which is treated as indirect foreign investment for the investee Indian entity made between February 13, 2009 and June 21, 2013 which was not in conformity with the downstream investment guidelines should have been intimated to the RBI by October 3, 2013 for treating such cases as compliant with NDI Rules.

10. Taxes and remittance of sale proceeds

10.1 Taxes

10.1.1 All transaction relating to foreign investment in India are required to be undertaken through banking channels in India and are subject to payment of applicable taxes and other duties/ levies in India.

10.2 Remittance of sale proceeds

10.2.1 Remittance of sale proceeds of an Indian security held by a person resident outside India will have to be made only in accordance with NDI Rules.

10.2.2 An authorised dealer bank may permit the remittance of sale proceeds of a security (net of applicable taxes) to the seller resident outside India provided:

- (a) the security was held by the seller on repatriation basis; and
- (b) either the security has been sold in compliance with the pricing guidelines or the RBI's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof.