

FEMA

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Amendments to Foreign Exchange Management (Non-Debt Instruments) Rules

Following amendments have been made to FEM (Non-Debt Instruments) Rules, 2019:

New Rule 2A inserted as under:

Reserve Bank to administer these rules –

- (1) These rules shall be administered by Reserve Bank of India
- (2) While administering these rules, the Reserve Bank may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.

Amendments to Rule 3 and 4:

In Rules 3 and 4 the words “in consultation with Central Government” are omitted.

The amended second Proviso to Rule 3 reads as under:

Save as otherwise provided in the Act or rules or regulations

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

The amended second Proviso to Rule 4 reads as under:

Save as otherwise provided in the Act or rules or regulations

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

Amendment to Serial No. 9.3 and 9.5 of Table in Schedule I

(i) for serial number 9.3 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

S. No.	Sector/Activity	Sectoral Cap	Entry Route
(1)	(2)	(3)	(4)
9.3	Air Transport Services		
	(1) (a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (b) Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
	(2) Non-Scheduled Air Transport Services	100%	Automatic
	(3) Helicopter services/seaplane services requiring Directorate General of Civil Aviation (DGCA) approval	100%	Automatic

Note: As per Schedule XI of the Aircraft Rules, 1937, Air Operator Certificate to operate Scheduled Air Transport Services (including Domestic Scheduled Passenger Airline or Regional Air Transport Service) is granted to such company or a body corporate, -

- (a) which is registered and has its principal place of business within India;
- (b) whose Chairman and at least two-thirds of its Directors are citizens of India; and
- (c) whose substantial ownership and effective control is vested in Indian nationals.” ;

(ii) for serial number 9.5 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

(1)	(2)
9.5	Other Conditions

(a) Air Transport Services shall include Domestic Scheduled Passenger Airlines, Non-Scheduled Air Transport Services, helicopter and seaplane services.

(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.

(c) Foreign airlines are allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49 per cent of their paid-up capital, subject to the following conditions, namely :-

(i) it is made under the Government approval route,

(ii) the 49 per cent limit will subsume FDI and FII/FPI investment,

(iii) the investments so made would need to comply with the relevant regulations of the Securities and Exchange Board of India (SEBI), such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations,

(iv) all foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment, and

(v) all technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

(d) In addition to the above conditions, foreign investment in M/s Air India Limited shall be subject to the following conditions, namely :-

(i) foreign investments in M/s Air India Limited, including that of foreign airlines shall not exceed 49 per cent either directly or indirectly except in case of those NRIs, who are Indian Nationals, where foreign investments is permitted up to 100 per cent under automatic route.

(ii) substantial ownership and effective control of M/s Air India Limited shall continue to be vested in Indian Nationals as stipulated in Aircraft Rules, 1937.

(e) FDI in Civil Aviation shall be subject to provisions of the Aircraft Rules, 1937, as amended from time to time.

Note:

(i) The FDI limits or entry routes mentioned at serial numbers 9.2 and 9.3 above, are applicable in the situation where there is no investment by foreign airline.

(ii) Any investment by foreign airlines in companies operating in Air Transport Services, including in M/s Air India Limited, shall be subject to entries (b) and (c) above.

(iii) The dispensation for those NRIs, who are Indian Nationals, regarding FDI up to 100 per cent will continue in respect of the investment regime specified at entries (c) (ii) and (d) above."