



Telecom Regulatory Authority of India
Consultation Paper
on
Foreign Investment in Broadcasting Sector

New Delhi: January 15, 2010

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Preface

Foreign investments play a major role in accelerating economic growth of a country. With the opening up of Indian economy, significant foreign investment from various countries has been coming to India in various sectors. The Government of India prescribes the limit for these investments for different sectors from time to time for various reasons associated with the sector.

2. The Foreign Investment Policy is not uniform across broadcasting sector. Therefore, for consistency in policy and a level playing field among competing technologies in view of convergence of broadcasting and communication technologies, the Authority earlier had examined the issue, and submitted its recommendations on foreign investment limit to Government of India in 2008.

3. Department of Industrial Policy and promotion has recently issued revised guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies for bringing out clarity, uniformity, consistency and homogeneity into methodology of calculation across different sectors/activities. Ministry of Information & Broadcasting has requested Telecom Regulatory Authority of India (TRAI) to revisit its recommendations in view of this development. TRAI has uploaded the issue for seeking preliminary views of the stakeholders on October 19, 2009. Taking into account the preliminary views of stakeholders, TRAI has formulated the issues which are presented in the consultation paper.

4. The issues raised in this consultation paper are for the purpose of discussion. As is the practice, views of the Authority will be finalized after receiving comments of the stakeholders.

5. It is hoped that stakeholders will benefit us with their detailed views before January 30, 2010. Comments will be posted on TRAI's website as and when they are received. Counter comments, if any, to the comments received may be sent to TRAI by February 08, 2010. These may please be furnished to Secretary, TRAI preferably in electronic form. [E-mail: traicable@yahoo.co.in or bcs@traigov.in]. The Fax numbers of TRAI are 011-23220442/ 011-23213294.

(Dr. J. S. Sarma)
Chairman, TRAI

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Chapter 1. Introduction

- 1.1 Foreign Investment (FI) plays an important role in the long-term economic development of a country not only as a source of capital but also for enhancing competitiveness of the domestic economy through transfer of technology, strengthening infrastructure, raising productivity and generating new employment opportunities.
- 1.2 The policy regarding the foreign investment at present is not uniform across telecommunication and broadcasting sector. The convergence of technologies is rapidly blurring the distinction between these two sectors; therefore it is utmost necessary for the policy framework to coherently adjust with the pace of these technological changes in the sector.
- 1.3 The Telecom Regulatory Authority of India has raised the issue of different FI limits for various services in the telecom, broadcasting and cable sector in its earlier recommendations to the Government of India, and has sent its recommendations on foreign investment limits for broadcasting sector on April 26, 2008 to Government of India.
- 1.4 Ministry of Information and Broadcasting in Government of India, vide its letter dated September 30, 2009 has requested TRAI to revisit its recommendations dated April 26, 2008 in view of recently issued Press Note (press Note 2 & 4 of 2009 series) by Department of Industrial Policy and Promotion about method of calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies.
- 1.5 This reference dated September 30, 2009 received from Ministry of Information and Broadcasting was placed on TRAI website www.trai.gov.in on October 19, 2009 to solicit preliminary views of the stakeholders on the subject. The stakeholders were requested to send their views to TRAI by November 02, 2009. This consultation paper has attempted to take care of the preliminary views of the stakeholders of the impact of the press note 2 & 4 of 2009 issued by the

Department of Industrial Policy and Promotion about method of calculation of total foreign investment.

- 1.6 As per sub-section (4) of section 11 of the TRAI Act, 1997, the Authority is required to ensure transparency while discharging its functions. TRAI is accordingly initiating a process of consultation to arrive at appropriate changes in the recommendations, if necessary, for the foreign investment in the broadcasting and cable sector.
- 1.7 Chapter 2 of this consultation paper discusses the background and extant recommendations on Foreign Investment, and the method of calculating the Foreign Direct Investment (FDI). This chapter also deals with the recent press releases issued by the Department of Industrial Policy and Promotion in the Ministry of Commerce & Industry, and the issues arising thereof. Chapter 3 summarises the issues for consultation, and at the end, some of the relevant materials are annexed for ready reference.

Chapter 2. Extent provisions and Issues

2.1 Foreign investment could be broadly of two types, namely Foreign Direct Investment and Foreign Institutional Investment. The Foreign Direct Investment (FDI) occurs when an investor based in one country acquires an asset in another country with the intent to manage the assets. Foreign Institutional Investment (FII) or Portfolio investment represents passive holdings of securities such as foreign stocks, bonds, or other financial assets.

2.2 Foreign Direct Investment (FDI) has the potential to generate employment, raise productivity, transfer skills and technology, enhance exports and contribute to the long-term economic development of the world's developing countries. There are three types of foreign direct investment, i.e.

- Equity Capital (the value of share investment of a Multi National Corporations (MNC) in shares of an enterprise in a foreign country)
- Reinvested earning (Profit reinvested)
- Other capital (short and Long- term borrowing & lending of funds between the MNC and the affiliate)

2.3 The current limits for foreign investment in different segments of broadcasting sector are as follows:

<u>Sub-sector</u>	<u>Limit</u>	<u>Entry Route</u>
FM Radio	20 % (FDI + FII)	FIPB approval required
Cable network	49 % (FDI + FII)	FIPB approval required
DTH	49 % (FDI + FII) FDI component not to exceed 20 %	FIPB approval required
Uplinking Hub/ Teleports	49 % (FDI + FII)	FIPB approval required
News & Current Affairs TV	26 % (FDI + FII)	FIPB approval required

Broadcaster		
Non-News Broadcaster	TV	No limits laid down FIPB approval required

- 2.4 The broadcasting services can be broadly grouped into carriage services and content services. Service providers which provide carriage services essentially provide the medium for carriage of content/ information. The carriage service providers create infrastructure for distribution of content. This category broadly refers to the service providers providing Cable TV Services, Headend in the Sky (HITS) services, DTH services, teleport services, mobile TV services and IPTV services. Such distributors of TV channels fall in the category of carriage service providers. Technically, it is possible for cable TV networks to provide voice telephony and broadband (including Internet). Similarly, the modern telecommunications networks are also capable of triple play, i.e. offering voice, video and data services and the terms and conditions of Unified Access Service License (UASL) agreement as well as of Cellular Mobile Telephone Service (CMTS) license agreement already permit the same. This is often referred to as convergence of broadcasting and telecom technologies with the consequential blurring of boundaries between these two technologies. Thus, convergence of technologies in telecom and broadcasting sectors has made it possible to provide broadcasting carriage services using telecom networks as well as broadcasting networks.
- 2.5 Generally, the content service providers create and package content and sell it to the carriage service providers. Primarily Broadcasters fall in the category of content service providers. Private FM radio services and Satellite radio service combine both content and carriage services as these service providers create their own content and also deliver the same to the listeners directly.
- 2.6 The Authority forwarded its recommendations on Foreign Investment Limits for Broadcasting Sector on April 26, 2008 keeping in mind the broadly these two

aspects. The recommended limit for Foreign Investment in different segment of broadcasting sector are tabulated below:

<u>Sub-sector</u>	<u>Current Foreign Investment Limit</u>	<u>Recommended Foreign Investment Limit</u>
FM Radio	20 % (FDI + FII)	49%
Cable network	49 % (FDI + FII)	74%
DTH	49 % (FDI + FII) FDI component not to exceed 20 %	74%
Uplinking Hub/ Teleports	49 % (FDI + FII)	74%
News & Current Affairs TV Broadcaster	26 % (FDI + FII)	49%
Non-News TV Broadcaster	No limits laid down	Status Quo

2.7 In its recommendations on Headend In The Sky (HITS) dated October 17, 2007, the Authority had recommended that the foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies. The Authority reiterated this limit in its recommendations dated April 26, 2008. The Ministry of Information and Broadcasting on November 26, 2009 has issued guidelines for HITS service, wherein the limit for foreign investment and the methodology of calculation of the direct and indirect foreign investment has been specified. The relevant clause of these guidelines is as under:

“1.3 The total direct and indirect foreign investment including portfolio and foreign direct investments into the company shall not exceed 74% at the time of application and during the currency of permission. The methodology of calculation of the direct and indirect foreign investments would be as per the extant policy of the

Government. The company will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on yearly basis."

- 2.8 In respect of mobile television services, the Authority has reiterated its earlier recommendations that composite foreign investment limit including FDI should be 74% for this service.
- 2.9 The reason for the differential treatment in respect of foreign investment limit between carriage services and content services is that the carriage services are in the nature of infrastructural services whereas content services are considered sensitive as these influence the minds and opinions of people in a big way across all sections of society. Within the content services, the News & Current Affairs related content services are considered more sensitive as the power of news content to influence public opinion may have a bearing on maintenance of public order, security of the State, maintenance of communal harmony.
- 2.10 For the sake of adopting a uniform policy, the Authority has in its recommendations dated April 26, 2008 recommended that as laid down in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by the Department of Industrial Policy & Promotion, both direct and indirect foreign investment in the licensee company will be counted for the purpose of foreign investment ceiling. Foreign Investment will include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment will mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.

- 2.11 As regards the methodology to calculate foreign investment is concerned, the Authority has recommended that the methodology used in telecom sector for calculation of foreign investments (as outlined in Press Note No. 3 (2007 Series) dated April 19, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry), Government of India, should be adopted for the broadcasting sector. The Summary of Recommendations dated April 26, 2008 on Foreign Investment Limits for Broadcasting Sector are placed at Annexure B, and the said Press Note No. 3 (2007 Series) is placed at Annexure C. According to the Press Note No. 3, the proportionate method is used for calculating indirect foreign investment in the telecom sector.
- 2.12 Recently the Department of Industrial Policy & Promotion (DIPP) (Ministry of Commerce & Industry), Government of India has issued Press Note No 2. (2009 Series) regarding the methodology to be used for calculating foreign investment including foreign direct and indirect investment. DIPP has observed that there are three different regimes for calculating the indirect foreign equity in a company across different sectors. Recognizing the need to bring in clarity, uniformity, consistency and homogeneity into the exact methodology of calculation across sectors/activities for direct and indirect foreign investment in Indian companies, the Government of India proposed the guidelines for calculating direct and indirect foreign investment.
- 2.13 As per these Press Notes, the foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens. For this purpose, an Indian company has been taken be taken as being:
- **"owned"** by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if more than 50% of

the equity interest in it is beneficially owned by resident Indian citizens and Indian companies, which are owned and controlled ultimately by resident Indian citizens;

and

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

2.13.1 To illustrate, if the indirect foreign investment is being calculated for Company A which has investment through an investing company B having foreign investment, then if the company B has foreign investment 40%, and is controlled by resident Indian citizens and/or Indian companies which are owned and controlled by resident Indian citizen.- Company A would not be taken as having any indirect foreign investment through Company B.

2.14 For cases where condition mentioned above is not satisfied or if the investing company is owned **or** controlled by ‘non resident entities’, the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment.

2.14.1 Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. For the purposes of explanation, it is clarified that this exception is being made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company.

2.14.2 For the above purpose, an Indian company may be taken as being:

- “**owned**” by ‘non resident entities’, if more than 50% of the equity interest in it is beneficially owned by non-residents
- “**controlled**” by ‘non resident entities’, if non-residents have the power to appoint a majority of its directors

2.14.3 To illustrate, if the indirect foreign investment is being calculated for Company A which has investment through an investing company B having foreign investment, the following would be the method of calculation:

- (i) where Company B has foreign investment less than 50%- Company A would not be taken as having any indirect foreign investment through Company B.
- (ii) where Company B has foreign investment of say 75% and:
 - a. invests 26% in Company A, the entire 26% investment by Company B would be treated as indirect foreign investment in Company A;
 - b. Invests 80% in Company A, the indirect foreign investment in Company A would be taken as 80%
 - c. where Company A is a wholly owned subsidiary of Company B (i.e. Company B owns 100% shares of Company A), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company A would be computed in the ratio of 75: 25 in the total investment of Company B in Company A.

2.15 As per the clause 5.5.4 of Press Note No 2. (2009 Series), in the I& B and Defense sectors where the sectoral cap is less than 49%, the company would need to be ‘owned **and** controlled’ by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens. The Press Note No

2. (2009 Series) issued by DIPP in this regard is placed at Annexure D. Press Note No. 4 (2009 Series) issued by DIPP on clarificatory guidelines on downstream investment by Indian companies is also placed at Annexure E.

Stakeholder Views

- 2.16 One issue raised by the stakeholders is that in light of Press notes 2-4 of 2009, much higher effective foreign equity is possible because even upto 49.99% foreign investment in investing company would be counted as nil as per the new method of calculating indirect foreign investment as per Press notes 2-4 of 2009. This was not the case earlier.
- 2.17 Another view is that the broadcasting sector, being sensitive in nature, should be taken out of the ambit of press note 2-4 of 2009, and the foreign investment limit should be calculated with earlier methodology.
- 2.18 One view indicated by the stakeholder is that the present methodology of arriving at the level of FDI is complex and not easily understandable to the foreign investor. In their view a distinction needs to be made based on the amount of 'control' exercised by the foreign investor.

Issues

- 2.19 The issue primarily arises is that whether there is any need for revisiting the currently recommended foreign investment limit in the light of the said Press Note No. 2 (2009 Series) and Press Note No. 4 (2009 Series). The argument in favour of revisiting could be that the TRAI in its recommendations dated April 26, 2009 has not only recommended the foreign investment limit in broadcasting sector but also recommended its methodology for calculating the foreign investment limit based on Press Note No. 3 (2007 Series), wherein foreign indirect investment was based on the proportionate method. Now, DIPP vide its above said Press Note No. 2 (2009 Series) has changed the method of calculating foreign investment including foreign indirect investment, as mentioned in para 2.13 above.

- 2.20 As stated earlier, the Authority has recognized broadly two types of services, i.e. carriage service and content service. The foreign investment limits on these types of services have been kept on different pedestal. The foreign limits on carriage services have been recommended for having consistency in policy and a level playing field among competing technologies in view of convergence of broadcasting and communication technologies. These recommendations are placed at Annexure B. The Authority broadly recommended 74% foreign investment limit in carriage services, and 49% in case of content services, where news etc. is involved.
- 2.21 The methodology used for calculation of foreign investments for various telecom services licenses, administered by Department of Telecommunications, is as per the extant policy of the Government. In nutshell, the methodology used for these licenses for carriage services is as per the extant policy of the Government.
- 2.22 Recently, Ministry of Information and Broadcasting has issued HITS service guidelines on November 26, 2009, wherein foreign investment is allowed upto 74%, and the methodology of calculation of the direct and indirect foreign investments would be as per the extant policy of the Government.
- 2.23 Others may say, that since in case of telecom services which are essentially carriage services, the foreign investment limit is 74% and the method of calculating foreign indirect investment is as per extant policy of the Government, i.e. as per press note 2-4 of 2009, the recommendations for carriage services in broadcasting sector may perhaps do not warrant any change.
- 2.24 One may argue that the foreign investment limits as well as method of calculating the foreign investment play a vital role for sensitive sector such as content services where news etc. is involved. Therefore, such services should be kept out of purview of Press Note No. 2 (2009 Series) and Press Note No. 4 (2009 Series).

2.25 The other contrary view could be that since the foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment only in case of Indian companies which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens, therefore, it would not make any impact even on the sensitive sectors, and to have consistency and clarity for calculating foreign investments, there is no need for any change in the recommendations for content service as well.

2.26 The issues, therefore, for considerations are:

2.26.1 **In view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series), Should there be any change required in the foreign investment limits recommended by TRAI for different carriage services in Broadcasting Sector. If yes, please specify alongwith appropriate rationales.**

2.26.2 **In view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series), Should there be any change required in the foreign investment limits recommended by TRAI for different content services in Broadcasting Sector. If yes, please specify alongwith appropriate rationales.**

2.26.3 **Whether any differentiation is required in terms of methodology used for calculation of foreign investments for Carriage Services, and for Content Services in broadcasting Sector? Elaborate with appropriate reasons.**

2.26.4 **Is there any need to exclude the content services involving news and current affairs out of ambit of Press Notes No. 2 and 4 (2009 Series) ? If yes, elaborate with appropriate reasoning.**

2.27 As per the clause 5.5.4 of Press Note No 2. (2009 Series), in the I& B and Defense sectors where the sectoral cap is less than 49%, the company would need to be

'owned **and** controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens. Clause 5.5.4.1 further lays down for this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956.

2.28 Because of this special requirement, the apprehension that much higher effective foreign equity than at present may become possible, may not be correct in respect of areas where the sectoral cap of 49% is applicable. However, in respect of areas where the sectoral cap is 74%, the provisions of paragraph 5.2.1 would operate and, thus, foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are owned and controlled by resident Indian citizens and/or Indian companies which are owned and controlled by resident Indian citizens. In other words, it may become possible for such an Indian company to carry investment upto 74% through other means including FDI, FII, NRIs, ADRs, GDRs, FCCB, CCD, etc. and, in addition have indirect foreign investment of any amount by an Investing Indian company which has less than 50% foreign equity and is controlled by resident Indian citizens or Indian companies owned and controlled by resident Indian citizens.

2.29 **The issues, therefore, for considerations are:**

2.29.1 Whether, having regard to the fact that there are now different sectoral caps for different activities in the broadcasting sector, there is any need to provide for any additional safeguards in the application of the principle contained in para 5.2.1 of DIPP's Press Note 2 (2009 Series) to the broadcasting sector, particularly in its application to activities for which a sectoral cap of more than 49% on FDI has been prescribed; and

2.29.2 If so, what, in your opinion, should be the additional safeguards?

2.30 Regarding procedure for approval of foreign investment, for maintaining the consistency across all carriage services, the Authority vide its recommendations dated April 26, 2008 had recommended that for carriage segments (Cable TV, DTH, HITS, teleport, mobile TV etc.) of broadcasting sector, foreign investment up to 49 percent should be on the automatic route. Foreign investment in the licensee company/ Indian promoters/ investment companies including their holding companies, will require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB will take note that investment is not coming from countries of concern and/or unfriendly entities.

2.31 As far as content segments (television channels, FM radio etc.) of broadcasting sector are concerned, the Authority had observed that the content service providers are generally assessed on a different platform/ yardstick from the carriage service providers as content services influence the minds and opinions of people in a big way across all sections of society. In view of the sensitive nature of content services, the Authority had recommended vide its recommendation dated April 26, 2008 that FIPB approval would be required for foreign investment in content segments of broadcasting sector.

2.32 The issues, therefore, for consideration are:

2.32.1 Whether the stipulation for recommended procedure for approval for carriage segments needs any modification in view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series). If yes, please specify alongwith appropriate rationales.

2.32.2 Whether the stipulation for recommended procedure for approval for content segments needs any modification in view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series). If yes, please specify alongwith appropriate rationales.

Chapter 3. Issues for Consultation

The issues, therefore, for considerations are:

- 3.1 In view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series), Should there be any change required in the foreign investment limits recommended by TRAI for different carriage services in Broadcasting Sector. If yes, please specify alongwith appropriate rationales.
- 3.2 In view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series), Should there be any change required in the foreign investment limits recommended by TRAI for different content services in Broadcasting Sector. If yes, please specify alongwith appropriate rationales.
- 3.3 Whether any differentiation is required in terms of methodology used for calculation of foreign investments for Carriage Services, and for Content Services in broadcasting Sector? Elaborate with appropriate reasons.
- 3.4 Is there any need to exclude the content services involving news and current affairs out of ambit of Press Notes No. 2 and 4 (2009 Series) ? If yes, elaborate with appropriate reasoning.
- 3.5 Whether, having regard to the fact that there are now different sectoral caps for different activities in the broadcasting sector, there is any need to provide for any additional safeguards in the application of the principle contained in para 5.2.1 of DIPP's Press Note 2 (2009 Series) to the broadcasting sector, particularly in its application to activities for which a sectoral cap of more than 49% on FDI has been prescribed; and
- 3.6 If so, what, in your opinion, should be the additional safeguards?
- 3.7 Whether the stipulation for recommended procedure for approval for carriage segments needs any modification in view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series). If yes, please specify alongwith appropriate rationales.

- 3.8 Whether the stipulation for recommended procedure for approval for content segments needs any modification in view of Press Note No. 2. (2009 Series) and Press Note No. 4. (2009 Series). If yes, please specify alongwith appropriate rationales.
- 3.9 Any other relevant issues you would like to suggest or comment upon.

Annexure A: Reference from Ministry of Information and Broadcasting

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MINISTRY OF INFORMATION & BROADCASTING
NEW DELHI-110115

D.O.No.8/15/2007-BP&L

30th September, 2009

Dear Shri Sarma,

On a reference made by this Ministry vide D.O. letter of even number dated 11.12.2007, the Telecom Regulatory Authority of India submitted its recommendations on foreign investment limits for various subsectors within the Broadcasting sector to the Government on 26th April, 2008. The recommendations are under consideration of the Ministry.

2. Department of Industrial Policy and Promotion has recently issued Press Note (Press Note No.2 & 4 of 2009 Series) about calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies. In view of these Press Notes, TRAI may like to revisit its recommendations dated 26.4.2008 on FDI in broadcasting sector.

3. I will be grateful if we are kindly informed about the action proposed to be taken in this regard.

With kind regards,

Yours sincerely,


(Raghu Menon)

Shri J.S. Sarma,
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi.

Annexure B: Summary of Recommendations

Chapter - 5: Summary of Recommendations

5.1 Carriage Services

- 5.1.1. The Authority recommends hike in the limits of foreign investment for cable networks from 49% to 74%.
- 5.1.2. The Authority reiterates its earlier recommendations that the total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies.
- 5.1.3. The Authority recommends that the total foreign investment including FDI for Teleport should be 74% as in case of HITS.
- 5.1.4. The Authority recommends that the total foreign investment including FDI for DTH should be 74% as in case of HITS and teleports.
- 5.1.5. The Authority reiterates its earlier recommendations that the composite foreign investment limit including FDI should be 74% for mobile television service.

5.2 Content Services

- 5.2.1. The Authority recommends that the status quo regarding foreign investment limits in the Downlinking guidelines should be maintained.
- 5.2.2. The Authority recommends that the status quo in regard to foreign investment limits for a non-news & current affairs TV channel in the Uplinking guidelines should continue.
- 5.2.3. The Authority recommends that the foreign investment limit for news & current affairs channels in the Uplinking guidelines may be increased from 26% to 49%.
- 5.2.4. The Authority recommends that the foreign investment limits for FM radio should be revised to 49%.

- 5.3 The Authority recommends that as laid down in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by the Department of Industrial Policy & Promotion, both direct and indirect foreign investment in the licensee company will be counted for the purpose of foreign investment ceiling. Foreign Investment will include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment will mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
- 5.4 The Authority recommends that for carriage segments (cable TV, DTH, HITS, teleport, mobile TV etc.) of broadcasting sector, foreign investment up to 49 percent should be on the automatic route. Foreign investment in the licensee company/ Indian promoters/ investment companies including their holding companies, will require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB will take note that investment is not coming from countries of concern and/or unfriendly entities.
- 5.5 The Authority recommends that FIPB approval would be required for foreign investment in content segments of broadcasting sector.
- 5.6 The Authority recommends that the methodology used in telecom sector for calculation of foreign investments (as outlined in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry), Government of India should be adopted for the broadcasting sector.
- 5.7 The Authority recommends that the conditions listed in sub paras 3.1.6 to 3.1.12 of the Uplinking Guidelines dated December 2, 2005 be made applicable to all the carriage

segments of broadcasting sector also where the composite foreign investment limits have been recommended to be enhanced to 74%.

- 5.8 The Authority recommends that security related issues should be addressed in consultation with the concerned agencies. For this purpose, the Authority recommends that the Government should consider Press Note No. 3 (2007 Series) dated 19th April, 2007 from the Department of Industrial Policy & Promotion relating to the telecom sector as a basis for formulating further guidelines/ terms & conditions, wherever appropriate for the broadcasting sector.

Annexure C: Press Note No. 3 (2007 Series)

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

PRESS NOTE NO. 3 (2007 SERIES)

Subject: Enhancement of the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector - revised guidelines

The Government, vide Press Note 5 (2005 Series) dated 3.11.2005, had notified the enhancement of Foreign Direct Investment (FDI) limits from 49 per cent to 74 per cent in certain telecom services subject to specified conditions.

2. The Government has on a review of the policy in this regard, decided to enhance the Foreign Direct Investment limit from 49 per cent to 74 percent in telecom services subject to the following conditions;

A. Foreign Direct Investment (FDI):

- (i) The enhancement of the FDI ceiling will be applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.
- (ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
- (iii) FDI up to 49 percent will continue to be on the automatic route. FDI in the licensee company/Indian promoters/investment companies including their holding companies, shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.
- (iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

- (v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.

B. Security Conditions:

- (i) The Chief Officer Incharge of technical network operations and the Chief Security Officer should be a resident Indian citizen.
- (ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor (Department of Telecommunications, Government of India) would be required if such information is to be provided to anybody else.
- (iii) For security reasons, domestic traffic of such entities as may be identified/specified by the licensor shall not be hauled/routed to any place outside India.
- (iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- (v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.
- (vi) The majority Directors on the Board of the company shall be Indian citizens.
- (vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.
- (viii) The Company shall not transfer the following to any person/place outside India:-
 - (a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature); and
 - (b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).
- (ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

- (x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.
- (xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).
- (xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.
- (xiii) The licensee company is not allowed to use remote access facility for monitoring of content.
- (xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.
- (xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.
- (xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.
- (xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.
- (xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.
- (xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.
- (xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.
- (xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this Press Note irrespective of the level of FDI.
- (xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom

infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

3. The conditions at para 2 above shall also be applicable to the existing companies operating telecom service(s) with the FDI cap of 49%.
4. The relevant provisions of FDI policy for 'investment companies', as given in Press Note 2 (2000 series) dated 11.2.2000 issued by Department of Industrial Policy and Promotion will no longer be applicable to telecom sector.
5. Press Note 15 (1998 series) and Press Note 2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.
6. An unconditional compliance to the aforesaid conditions shall be submitted by the existing telecom service providers to the licensor within 3 months from date of the Press Note and, thereafter, compliance report shall be submitted on 1st day of July and January on six monthly basis.
7. Press Note 5 (2005 Series) dated 3.11.2005 stands superceded by this Press Note.

(Gopal Krishna)
Joint Secretary to the Government of India

F. No. 12/2/2006-FC dated the 19th April, 2007

Copy forwarded to Press Information Officer, Press Information Bureau, for giving wide publicity to the above Press Note.

Annexure D: Press Note No. 2 (2009 Series)

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

Press Note No 2 (2009 Series)

Subject: Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies.

Investment in Indian companies can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can be a cascading investment i.e. through multi-layered structure also.

2.0 The method of calculation of total foreign investment in an Indian company including indirect foreign investment through other Indian companies has been detailed out in entry 10 of Press Note 2(2000), Press Note 1(2006), Press Note 3(2007) and entry 24 of Press Note 7 (2008). The methodology for some sectors is also separately contained in either sectoral regulations or rules and regulations under specific statutes. Essentially the present FDI guidelines provide for three different regimes for calculation of Indirect Foreign Equity-

2.1 Proportionate method is used in Telecom/ Broadcasting sectors through Press Note 5 of 2005 (modifying Press Note 2 of 2000), Press Note 1(2006) and Press Note 3(2007).

2.2 Insurance: outlined in IRDA regulations (IRDA (Registration of Indian Insurance Companies) Regulations, 2000) and

2.3 In all other sectors, for an investing company in the infrastructure / service sector attracting equity caps, indirect equity is calculated as was given in Press Note 2 of 2000: *Investing companies in infrastructure/service sectors (entry no. 10)*. This policy was reiterated by Press Note 4 of 2006(Entry no.18) which was modified by a Press release dated November 13, 2006 and Press Note 7(2008) (entry 24). According to this, foreign investment in an investing company will not be set off against this cap where the foreign equity in the investing company does not exceed 49% and the Management of the investing company is with Indian owners. FIPB approval is required by Investing Companies for downstream investment.

3.0 Recognising the need to bring in clarity, uniformity, consistency and homogeneity into the exact methodology of calculation across sectors/activities for all direct and indirect foreign investment in Indian companies, Government of India now proposes to issue the following guidelines for calculation of direct and indirect foreign investment.

4.0 **Definitions:**

4.1 For the purpose of computation of indirect Foreign investment, Foreign Investment in Indian company shall include all types of foreign investments i.e. FDI, investment by FIIs(holding as on March 31), NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and convertible preference shares, convertible Currency Debentures regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

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

4.3 A 'non resident entity' means a 'person resident outside India' as defined under FEMA 1999.

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

4.5 'Investing Company' means an Indian Company making equity/preference/CCD investment into another Indian Company.

4.6 Holding Company would have the same meaning as defined in Indian Companies Act 1956.

5.0 **Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in an Indian company.**

5.1 **Counting the Direct Foreign Investment:**

5.1.1. All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.

5.2 **Counting of indirect foreign Investment:**

5.2.1 The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian

companies which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens.

For this purpose, an Indian company may be taken as being:

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

and

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

5.2.2 For cases where condition 5.2.1 above is not satisfied or if the investing company is owned **or** controlled by 'non resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment,

5.2.2.1 Provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. For the purposes of explanation, it is clarified that this exception is being made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company.

5.2.2.2 For the above purpose, an Indian company may be taken as being:

- **"owned"** by 'non resident entities', if more than 50% of the equity interest in it is beneficially owned by non-residents
- **"controlled"** by 'non resident entities', if non-residents have the power to appoint a majority of its directors

5.2.2.3 Illustration

To illustrate, if the indirect foreign investment is being calculated for Company A which has investment through an investing company B having foreign investment, the following would be the method of calculation:

- (i) where Company B has foreign investment less than 50%- Company A would not be taken as having any indirect foreign investment through Company B.
- (ii) where Company B has foreign investment of say 75% and:
 - a. invests 26% in Company A, the entire 26% investment by Company B would be treated as indirect foreign investment in Company A;

b. Invests 80% in Company A, the indirect foreign investment in Company A would be taken as 80%

c. where Company A is a wholly owned subsidiary of Company B (i.e. Company B owns 100% shares of Company A), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company A would be computed in the ratio of 75: 25 in the total investment of Company B in Company A.

5.3 The total foreign investment would be the sum total of direct and indirect foreign investment.

5.4 The above methodology of calculation would apply at every stage of investment in Indian Companies and thus to each and every Indian Company.

5.5 **Additional conditions:**

5.5.1 The full details about the foreign investment including ownership details etc. in Indian company(s) and information about the control of the company(s) would be furnished by the Company(s) to the Government of India at the time of seeking approval.

5.5.2 In any sector/activity, where Government approval is required for foreign investment and in cases where there are any inter-se agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider for determining ownership and control such inter-se agreements when considering the case for granting approval for foreign investment.

5.5.3 In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.

5.5.4 In the I& B and Defense sectors where the sectoral cap is less than 49%, the company would need to be 'owned **and** controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.

5.5.4.1 For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term 'largest Indian shareholder', used in this clause, will include any or a combination of the following:

- (i) In the case of an individual shareholder,
 - (a) The individual shareholder,
 - (b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
 - (c) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
- (ii) In the case of an Indian company,
 - (a) The Indian company
 - (b) A group of Indian companies under the same management and ownership control.

5.5.4.2 For the purpose of this Clause, “Indian company” shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

5.5.4.3 Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (i) and (ii) of clause 5.5.4.1 above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

5.5.5 If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

6.0 The above mentioned policy and the methodology would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statutes or rules there under. Thus, for the present purposes this methodology will not be applicable in the Insurance Sector where it will continue to be governed by the relevant Regulation.

7.0 **Policy for downstream investment by investing companies:**

Based on the above methodology for calculation of total foreign investment in Indian companies, the policy on downstream investment-i.e. for only operating companies, operating-cum-investing companies, investing companies and for holding companies without any downstream investment and operations would be notified separately in amendment to Press Note 3 of 1997, Press Note 9 of 1999, entry 10 under Press Note 2 of 2000, entry 18 under Press Note 4 of 2006 as amended by the Press release dated 13th November, 2006, and entry 24 of Press Note 7(2008).

8.0 Any foreign investment already made in accordance with the guidelines in existence prior to issue of this Press Note would not require any modification to conform with these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

8.1 Any violation of these guidelines and non-compliance would be a violation under FEMA 1999 and would lead to action under the relevant regulations under the Act.

9.0 Entry 10 under Press Note 2(2000), entry 18 under Press Note 4(2006), as amended by the Press Release dated 13th November 2006 and entry 24 under Press Note 7(2008) stand deleted.

10.0 The relevant entry pertaining to calculation of foreign equity of the applicant company under paragraph 2(c) of Press Note 1 of 2006 and paragraph 2.A.(ii) of Press Note 3 of 2007 stand deleted.

11.0 These guidelines will be effective from the date of issue of this Press Note.

GOPAL KRISHNA
Joint Secretary to the Government of India

D/o IPP F.No.12/22/2007-FC

dated the 13th February 2009

Annexure E: Press Note No. 4 (2009 Series)

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

Press Note No. 4 (2009 Series)

Subject: Clarificatory guidelines on downstream investment by Indian Companies.

The Policy for downstream investment by Indian companies seeks to lay down and clarify about compliance with the Foreign investment norms on entry route, conditionalities and sectoral caps. The 'guiding principle' is that downstream investment by companies 'owned' or 'controlled' by non resident entities would require to follow the same norms as a direct foreign investment i.e. only as much can be done by way of indirect foreign investment through downstream investment in terms of Press Note 2 (2009 series) as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

2.0 The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company, at every stage of investment, including downstream investment, have been detailed in Press Note 2 of 2009 which enables determination of total foreign investment in any/all Indian Companies.

3.0 Definitions:

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

3.2 'Operating Company' is an Indian company which is undertaking operations in various economic activities and sectors.

3.3 'Downstream investment' means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Press Note 2 of 2009. Para 5.2 of the said Press Note provides the guidelines for calculation of indirect foreign investment with conditions specified in para 5.5.

3.4 'Investing Company' means an Indian Company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings/securities.

3.5 'Foreign Investment' would have the same meaning as in Press Note 2 (2009 series).

4.0 **Guidelines for downstream investment by Investing Indian Companies 'owned or controlled by non resident entities' as per Press Note 2 of 2009:**

Recognizing the need to bring in clarity into the Policy for downstream investment by investing Indian companies, the Government of India now proposes to clarify the policy in this regard.

4.1 The Policy on downstream investment comprises policy for (a) only operating companies (b) operating-cum-investing companies (c) only investing companies.

4.2 The Policy in this regard will be as below:

4.2.1 Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.

4.2.2 Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

4.2.3 Investing companies: Foreign Investment in Investing Companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.

5.0 For companies which do not have any operations and also do not have any downstream investments, for infusion of foreign investment into such companies, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

6.0 For Operating-cum- investing companies and investing companies (Para 4.2.2, 4.2.3) and for companies as per para 5.0 above, downstream investments can be made subject to the following conditions:

(a) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if equity shares/CCPS/CCD have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;

(c) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

(d) Investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

7.0 Para 11 of Press Note 3 of 1997 and Press Note 9 of 1999 stand deleted. These guidelines will be effective from the date of issue of this Press Note. FDI Policy announced vide Annex to Press Note 7 (2008) dated June 16, 2008 stands amplified to the above extent.

GOPAL KRISHNA
Joint Secretary to the Government of India

D/o. IPP File No. 12(22)/2007-FC

Dated 25th February, 2009

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