IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

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FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

New Delhi
Filed on :18.5.2015

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

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19, BABAR ROAD, BENGALI MARKET

New Delhi
Filed on :18.5.2015

A

TO BE FILLED BY HAND

LISTING PROFORMA

INSTRUCTIONS : 1. DO NOT WRITE OUTSIDE THE BOXES. 2. WRITE IN BLOCK CAPITAL LETTERS. 3. ONE CHARACTER IN EACH BOX. 4. DO NOT Staple the Sheet.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Case Type: W.P.(C) Number: ____ OF Year: 2015

IN THE MATTER OF:-

NAME: RETAILERS ASSOCIATION OF INDIA & ANR. .....PLAINTIFF / PETITIONER

VS

NAME: UNION OF INDIA ....DEFENDANT / RESPONDENT

1 (a) Case Category ____ . __

(b) Case Category ____ . __

Date of Impugned order __ / __ / ____

3 (a) Similar Matter Case Type / Number ____ ____ OF ____

4 Statute Involved: WRIT PETITION U/A 226 OF THE CONSTITUTION OF INDIA

Criminal Matters - Code 100 to 105

FIR No. ____ / ____

FIR Date __ / __ / ____

Police Station

Service Matters - Code 500 to 505

Department / Authority / Organization etc.

Motors Accident Claim Matters - Code 600

Insurance Company

Lawyers Code: D/1601/1997

B

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

NO.____________________

SHRI ______________________

Advocate

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

Sir,

The enclosed Writ Petition in the aforesaid matter is being filed on behalf of the Petitioners and the same is likely to be listed on 20-05-15 or any date, thereafter. Please take notice accordingly.

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

New Delhi
Filed on :18.5.2015

C

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

URGENT APPLICATION

To
The Registrar
High Court of Delhi at New Delhi
New Delhi

Dear Sir,

Kindly treat the accompanying Writ Petition on an urgent basis and the grounds of urgency are mentioned in the Writ Petition.

Thanking you,

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

New Delhi
Filed on : 18.5.2015

D E

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

CERTIFICATE

THIS IS TO CERTIFY THAT IDENTICAL COLOURED PHOTOCOPY OF THE ANNEXURE-P8, P12 AND P14 HAVE BEEN SUPPLIED TO THE RESPONDENTS.

FILED BY

((RISHI AGRAWALA)
ADVOCATE FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON:18.5.2015

F

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

MEMO OF PARTIES

1. Retailers Association of India
111/112, Ascot Centre,
Near Hotel ITC Maratha
Sahar Road, Sahar,
Andheri (E), Mumbai
Through its Authorized Signatory
Mr. Gautam Jain

2. Aishwarya Design Studio Pvt. Ltd.
Shop No.1, Rubby Hose
Irla Society Road,
Opp. Alfa-3,
Vile Parle (East),
Mumbai-400056
Through its Director
Mr. Mahesh Khimji Shah ...Petitioners

Versus

1. Union of India
Through Ministry of Commerce and Industry
Department of Industrial Policy and Promotion,
Government of India,

2. Union of India
through Ministry of Consumer Affairs,

6

Food & Public Distribution,
Department of Consumer Affairs
Government of India
Krishi Bhavan, New Delhi

3. Union of India
Through
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi 110001 ...Respondents

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

New Delhi
Filed on :18.5.2015

H

LIST OF DATES

SR.NO.	PARTICULARS
22.11.2004	This Hon'ble Court passed a judgment in the case of Federation of Association of Maharashtra Vs. Union of India reported in ILR(2004) II Del. 530 whereby a distinction between Business to Business (B2B) and Business to Consumer (B2C) trade was pronounced.
10.2.2006	The Government of India issued a Press Note whereby 100% FDI in "single brand retail" was allowed.
2012	The Government of India allowed only 51% FDI in "multi brand retail trade" that too through the Government approval route in a total unworkable manner and with onerous conditions.
10.4.2012	The Government of India allowed FDI in e-commerce B2B trade.
2013	The WTO came out with its report on e-commerce in developing countries whereby the WTO defined B2B and B2C e-commerce transactions in the following manner: *"Business to business (B2B)* *B2B is e-commerce between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. This is the exchange of products, services, or information between businesses rather than between businesses and consumers.*

I

	Business to consumers (B2C) *B2C e-commerce entails businesses selling to the general public, typically through catalogues that make use of shopping cart software. Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions."*
7.1.2014	The Government of India came up with a discussion paper on e-commerce noting down the various factors in this regard and requested for comments by 30.1.2014.
28.1.2014	The Petitioner No.1 sent its feed back to the Government of India on the discussion paper on e-commerce.
25.6.2014 & 17.11.2014	The Petitioners sent representations to the Respondent bringing to the notice of the Respondent the discrepancies in the FDI Policy with regard to the "market place" model in B2C e-commerce transactions.
18.7.2014	In the Lok Sabha a question was asked in respect of FDI in e-commerce. To the said question the Government of India answered as follows: *"(a): As per extant FDI policy, FDI up to 100% under the automatic route is permitted in B2B e-commerce activities. The present policy does not permit retail trading, in any form, by means of e-commerce, for companies with FDI engaged in the activity of single/multi brand retail trading.* *The following announcement in respect of FDI with reference to manufacturing sector was made by FM during his Budget Speech on 10.07.2014:*

J

	"FDI in the manufacturing sector is today on the automatic route. The manufacturing units will be allowed to sell its products through retail including E-commerce platforms without any additional approval". *Government takes into consideration the concerns of all stakeholders including domestic industry and consumers while formulating FDI policy. Safeguards are put into the FDI policy wherever necessary.*
Dec. 2014	The Research and Information Division of the Lok Sabha Secretariat prepared an Information Bulletin having No.LARRDIS(EF)2014/IB-12 wherein the Secretariat of the Parliament recognized that despite there being a prohibition on FDI in B2C e-commerce various parties were "working around" such prohibition and utilizing the "market place" model to invite FDI into them. Examples of Filipkart and snapdeal were given.
28.4.2015	The Respondent No.1 invited the stakeholders to the exclusion of the retailers in the physical world for a consideration of FDI Policy on e-commerce sector on 14.5.2015 without considering the multi brand FDI policy holistically.
12.5.2015	The Petitioners wrote back to the Respondent stating that both e-commerce and retailers in the physical world deserve to be treated at par and accordingly the consideration should be for both players.
12.5.2015	The Respondent No.1 issued the updated FDI Policy but there was no change in the same as regards e-commerce, single brand retail or multi brand retail.
14.5.2015	The Economic Times reported that the Respondent

K

	No.1 had held a meeting with stakeholders in the e-commerce sector including Flipkart and snapdeal but it was positioned only as a first meeting.
18.5.2015	Hence, the present Writ Petition.

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

1. Retailers Association of India
   111/112, Ascot Centre,
   Near Hotel ITC Maratha
   Sahar Road, Sahar,
   Andheri (E), Mumbai
   Through its Authorized Signatory
   Mr. Gautam Jain

2. Aishwarya Design Studio Pvt. Ltd.
   Shop No.1, Rubby Hose
   Irla Society Road,
   Opp. Alfa-3,
   Vile Parle (East),
   Mumbai-400056
   Through its Director
   Mr. Mahesh Khimji Shah ...Petitioners

Versus

1. Union of India
   Through Ministry of Commerce and Industry
   Department of Industrial Policy and Promotion,
   Government of India,

2. Union of India
   through Ministry of Consumer Affairs,
   Food & Public Distribution,
   Department of Consumer Affairs
   Government of India
   Krishi Bhavan, New Delhi

3. Union of India
   Through
   Ministry of Finance,
   Department of Revenue,
   Government of India,
   North Block,
   New Delhi 110001 ...Respondents

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

MOST RESPECTFULLY SHOWETH:

1. The present writ petition is being filed by the Petitioner No.1 which is an Association of various companies involved in the business of "retail" in India. The Petitioner No.2 is one of the members of the Petitioner No.1 Association. The present Petition seeks a "level playing field" amongst the "retailers in the physical world" and "retailers in the cyberspace" (internet world), in relation to the application of Indian laws including the Foreign Direct Investment Regulations issued by the Respondent No.1 and as applied by Respondent Nos. 2 and 3.

PARTIES

2. The Petitioner No.1 is an association of 958 number of retailers in India and represents 172000 retail stores all across India. Petitioners submit that lacs of person directly and crores of persons indirectly involved in the retail business being conducted by the Petitioners members. The Petitioner No.1 is a company registered under Section 25 of Companies Act 1956 The Petitioner No.1 is involved in protection of rights of its members and also for making representations to the Respondents for the welfare of its members.

3. The Petitioner No.2 is a member of the Petitioner No.1 association. The Petitioner No.2 is an incorporated company. The shareholders of the Petitioner No.2 are entirely Indian.

4. The Respondents Nos. 1 to 3 are the Union of India and different arms thereof. The Respondents are State within the meaning of Article 12 of the Constitution of India and accordingly amenable to the writ jurisdiction of this Hon'ble Court.

BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

A. <u>RETAILERS EVOLUTION IN INDIA IN THE PHYSICAL SPACE</u>

5. The Petitioners submit that prior to the opening up of the Indian economy in the year 1991, the retail business in India was considerably limited to small shop owners in various cities and towns of India. The shop owners used to source the material to sell at their shop premises from manufacturers and sell it locally. This is because there were import restrictions and foreign investment was prohibited.

6. In the year 1991, the Indian economy opened up. Due to such opening up of the economy, Foreign Direct Investment (FDI) was allowed into infrastructure sectors. Due to inflow of foreign exchange, various businesses got an impetus and as time went by, Foreign Direct Investment was allowed in various other sectors also. Today the economy is virtually

fully opened up to foreign participation except only in certain prohibited sectors. The inflow of foreign exchange through Foreign Direct Investment changes the business and infrastructural landscape of India since it is low cost capital and provides various other benefits of world experience, world market, and technical expertise. A copy of the Consolidated FDI Policy dated 12.5.2015 as applicable on date is annexed hereto as **Annexure-P1** (hereinafter referred to as the FDI Policy).

7. The Petitioners submit that the FDI Policy becomes Annexure-B to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 (hereinafter referred to as the FDI Regulations) issued under the Foreign Exchange Management Act, 1999 and accordingly gets statutory force. A copy of the FDI Regulations is annexed as **Annexure-P2.** The Petitioner submits that the FDI Regulations only permits FDI in the mentioned sectors and if not mentioned then it is prohibited.

8. The Petitioners submit that though there is a mention of "e-commerce activities" in Serial No.16.2, "single brand product retail trading" in Serial 16.4 and "multi brand retail trading" in Serial No.16.5, of Annexure-B to the FDI Regulations, there is no definition of any of these expressions provided either

the FDI Regulations or the FDI Policy. The Petitioners submit that these expressions deserve to be interpreted as per their literal english meaning and no person is entitled to adopt words and meanings which seek to detract from the said expressions.

9. The Petitioner submits that due to FDI having been allowed in Real Estate Sector, there was tremendous growth and modernization of buildings. Since large spaces became available for rental purposes, the retail business in India also changed for the better. Every sector where FDI was allowed, boomed, and changed the lives of the citizen for the better. This clearly makes it evident that FDI is a key driver for growth and demand. The Petitioners submit that in order to cater to rentals which had increased due to better quality of buildings, the retailers had to organize in a better manner leading to a downstream organization and growth up to the root level. The Petitioners submit that with this purpose, the retailers had to place a more attractive variety and quality of goods on the shelf. As the retail sector is a consumer driven market the demand from the consumers drives competition amongst the manufacturer. Therefore, growth of the retail sector is extremely important for uplifting the economy and the lives of people. Through improvement in the retail sector, the economy is automatically driven towards growth, collection of more taxes, manufacture of better product,

increase in employment, and organized retail improves infrastructure. However, to improve the retail sector, unrestricted FDI is required.

10. The Petitioners submit that "retail" is primarily supply of goods to the end consumer and is to be viewed from the side of the consumer and not from the side of the seller. The Petitioners submit that this is because wholesale trade is trade which is viewed from the eyes of a wholesale purchaser. Therefore, where a person purchases the goods for his own use, or purchases such goods in small quantities to satisfy personal consumption, it amounts to "retail". The Petitioners submit that in order to grow the retail trade, large format stores were created by the member of the Petitioner so that the consumers get a wide variety of goods for their personal needs and consumption. The Petitioners submit that "retail" is not synonymous with "resale" because retail sales can be achieved by a seller, without having any element of ownership in the goods. The Petitioners submit that creation of large retail spaces results in the growth of the industry, provides employment and such growth reaches the root level upto the farmer. This boosts the economy because the resultant effect of such retail sales is the increase of the gross domestic product which is reflective of country's national wealth.

11. The Petitioners submit that though FDI was not permitted in the "retail trade" [which is Business to Customer (B2C)], FDI was being permitted in cash and carry "wholesale trade" [which is Business to Business (B2B)]. There were companies who were involved in providing wholesale trade like Metro Cash and Carry Pvt. Ltd. promoted by a foreign corporation namely Metro Cash and Carry Gmbh. An issue was raised before this Hon'ble Court in respect of their operations being in violation of the FDI policy since it was alleged that they were indirectly involved in B2C transactions and were not purely B2B sellers. This Hon'ble Court in the case of *Federation of Association of Maharashtra vs. Union of India* reported in ILR(2004) II Delhi 530 held that the said company was not in violation of the FDI policy because it restricted the entry of purchasers into its warehouses and market place only to those who were interested in wholesale. However, this Hon'ble Court for reaching the said conclusion also considered the various other aspects of "retail sale". A copy of the judgment in the case of *Federation of Association of Maharashtra Vs. Union of India* reported in ILR (2004) II Delhi 530 is annexed hereto as **Annexure-P3.**

12. In the above judgment of this Hon'ble Court both B2B and B2C transactions have been defined in the following manner :

    a. Business to Consumer (B2C) transaction:

> ***"20.** The aforesaid concept of cash and carry wholesale trade, especially with reference to B2B sales has also been explained in the counter affidavits of respondents No. 4 and 5. It has been explained that the approval granted by the GOI is adopting and absorbing the worldwide concept of cash and carry in India, which is a modern concept of the traditional wholesale trade, which in turn is clearly opposed to retail. B2B sales are permissible and it is irrelevant whether the goods are sold to business customer, who conducts retail or to a business customer conducting operations other than retail such as restaurant or a hotel. Respondent No. 4 is stated to have set up, in fact, a warehouse facility where businesses purchase for their commercial purposes and the goods are stored in an industrial storage racks. The entry is restricted on the basis of the prior registration with the said respondent, which in turn is dependent on sales-tax registration or valid trade licence. Sale is not to consumers, but to businesses. This aspect is further explained by what is known as business to consumer (B2C) as opposed to B2B trade. **Trade to consumer is affected in case of a domestic trading and such consumer would naturally be a person, who is acting for purposes other than those of his trade, business or profession. Thus, as distinguished from retail B2C sale, a wholesale trade is sale to a person for purposes of his trade, business or profession**. In the guidelines for FIPB in sub-para (k) of para 8, it has been emphasized whether the items involve only trading activity and whether it involves export or both export and import or also includes domestic trading and if domestic trading whether it also includes retail trading."*

b. Business to Business (B2B) transaction:

> ***"60.** It has to be appreciated that B2B sales is a concept which internationally today carries a different meaning as is apparent from the various judgments and definitions given. This has also an impact on what is meant by wholesale trade and retail trade in the international parlance. Thus, B2B trade forming a part of wholesale trading was a later development to the traditional concept*

of what is understood by retail and wholesale trade. The traditional concept of wholesale trade was, thus, expanded and the emphasis on the quantity of sale went down. What has been emphasised is the purpose for which the transaction takes place. The concept of B2B trade is that the goods are purchased by the business for further resale or for use in-house or for its customers. Thus, the contention of the respondents is correct that a specialised meaning has been acquired to this concept. The concept of setting such wholesale outlets is also different."

13. On 10.2.2006 the Respondent Government allowed 100% FDI in "single brand retail". The purpose of opening such FDI was that, only those persons who are having their own brands, would involve in retail in their own showrooms. The Petitioner submits that such retail activity being limited in nature does not affect competition. However, as per the extant policy no FDI can be invited for e-commerce even in single brand retail. A copy of the press Note dated 10.2.2006 is annexed hereto as **Annexure-P4.**

14. The Petitioners submit that FDI in the Multi Brand Retail Sector would have provided a boost to the Indian economy and would have reached the grass root level. The Petitioners submit that in order to allow FDI in Multi Brand Retail, the Petitioner's association made various representation to the Government. The Petitioner submits that in order to support FDI in multi brand retail, the ASSOCHAM, India prepared a paper showing the various advantages which would be achieved through allowing of FDI in retail. A copy of the said

paper prepared by ASSOCHAM, India is annexed hereto as **Annexure-P5.**

15. The Petitioners submit that for the next level of growth it was but necessary that Foreign Direct Investment was fully allowed in "retail" in the physical world. The advantages of such FDI would have been inter alia as follows:

    a) Multiplier effect in creating employment, revenue for the public exchequer, higher growth rates that are seen in developed economies and also a wide variety of goods available for daily consumption.

    b) Growth of ancillary businesses, tourism and higher GDP for the economy

    c) Infrastructure development.

    d) Organization of the retail sector leading to proper tax collection.

16. The Petitioners submit that in the year 2012, the Respondent Government allowed only 51% FDI in "Multi Brand Retail Trade" that too through the Government approval route, in a totally unworkable manner with the following primary conditions:

> *"(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:*
>
> *(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.*

(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.

(iii) At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

(iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US $ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to

conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

(vii) Government will have the first right to procurement of agricultural products.

(viii) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc.

(ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multibrand retail trading.

(x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval."

17. The Petitioners submit that the above FDI policy gives from one hand but takes it away from the other. In the last one year there has not been even a single FDI inflow in this sector from anywhere in the world which is shown from the fact sheet on FDI from April 2000 and Feb. 2015 as available on the website of Respondent No.1. A copy of the said fact sheet is annexed hereto as **Annexure-P6.**

18. The Petitioner submits that the upshot of the above discussion is as follows:

    a) Multi Brand Retail Trade is a key driver for the economy since its growth leads to root level growth.

    b) Multi Brand Retail Trade is B2C because it is required to be viewed from the consumer's side as making goods available to the consumer.

    c) Retail Trade is B2C because the consumer has no concern as to how the business is organized by the retail trader but it is the consumer's interest in obtaining the goods from the retailer at the price so published.

    d) FDI in Multi Brand Retail Trade with severe restrictions makes the said provision unworkable with the result that no FDI has been achieved in such retail trade in the last one year.

    e) Though FDI in Single Brand Retail is 100% permissible and FDI in Multi Brand Retail Trade is restrictively permissible, both the sectors cannot involve in e-commerce once FDI is undertaken.

B. <u>EVOLUTION OF E-COMMERCE</u>

19. The Petitioners submit that e-commerce is electronic commerce wherein a person is able to purchase goods or avail services on the worldwide web (the internet), sitting

anywhere and source such goods or services from anywhere in the world. The basic feature of e-commerce is that there is a software controlled "shopping cart" and there is a "payment gateway" for making payments and the goods so purchased are delivered at the doorstep of the person. Once a person chooses a product and places the same in the shopping cart, on finalization of the purchase, the person is asked for options of making payment which can be made through credit card, debit car, cash on delivery, net banking, etc. On finalization of the electronic purchase, the physical goods are delivered through mail/courier.

20. The World Trade Organization in its paper on Electronic Commerce, Development And Small, Medium-Sized Enterprises (Report No.WT/COMTD/W/193 dated 14.2.2013) has defined e-commerce as follows:

> *"10. For purposes of the trade focus of this paper, e-commerce is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. Even though goods or services are ordered electronically, the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations. Included in these electronic transactions are orders made over the web, extranet or electronic data interchange. The type of transaction made is defined by the method of placing the order. Normally excluded are orders made by telephone calls, facsimile or manually typed e-mails."*

A copy of the Report of the World Trade Organization is annexed hereto as **Annexure-P7.**

21. The Petitioners submit that e-commerce is also of two varieties i.e. B2B and B2C. The Petitioners submit that B2B transactions are in fact wholesale trade, where a purchaser contacts a seller to make a purchase for use in his own business through retail. The Petitioners submit that such B2B trade is not retail trade because the purchase is in large numbers without the ultimate objective of personal consumption or satisfaction of personal need.

22. In the FDI Policy B2B and B2C is sought to be differentiated in Para 6.2.16.1.1 in the following manner:

> *"6.2.16.1.1 Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, imply sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce."*

23. In Paragraph 6.2.16.2 Guidelines for Cash and Carry Wholesale Trading has been provided which is as follows:

> *"6.2.16.1.2 Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):*

(a) For undertaking WT, requisite licenses/ registration / permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government /Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.

(b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:

(I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or

(II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/ registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or

(III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or

(IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.

Note: An entity, to whom WT is made, may fulfill any one of the 4 conditions.

(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.

(d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture

(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.

(f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.

24. The Petitioners submit that the above guideline provided in the FDI Policy creating a distinction between B2B and B2C transactions deserves to be applied in respect of other trades. In any case, the World Trade Organization in its Report on "e-commerce in Developing Countries" has sought to define B2B and B2C e-commerce transaction in the following manner:

> *"Business to business (B2B)*
>
> *B2B is e-commerce between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. This is the exchange of products, services, or information between businesses rather than between businesses and consumers.*
>
> *Business to consumers (B2C)*
>
> *B2C e-commerce entails businesses selling to the general public, typically through catalogues that make use of shopping cart software. Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions."*

A copy of the Report of the WTO on "e-commerce in Developing Countries" is annexed hereto as **Annexure-P8**

25. The Petitioners, therefore, submit that all other forms of sale and purchase of goods through the medium of the internet where the consumer achieves satisfaction of personal needs of a customer is a B2C transaction. There are no separate

distinguishable features mentioned in the FDI Policy as regards market-place e-commerce being different from "E-commerce" in FDI circular. It is a matter of law that where the FDI circular is silent, it is automatic that FDI in that sector shall not be allowed.

26. The Petitioners submit that in respect of B2C e-commerce the resultant delivery of the goods is in the physical world, though the source of the product may or may not be physically seen by the consumer. The Petitioners submit that between "retail sale in the physical space" and "purchase through e-commerce" there is no distinction or difference. It results in the common factum of enjoyment of the goods /services by the end consumer, the only difference being in the way the goods are ordered or delivered. In respect of e-commerce due to a virtual interface provided by the internet the purchase of goods is from an unseen source and the delivery is at the consumer's end directly. The Petitioners for the purposes of showing a comparison between B2C transactions in the physical world and in cyberspace, seek to rely upon the following table of similarities:

S.No.	**Feature**	**B2C transaction in the physical world.**	**B2C in the e-commerce**
1.	**Availability of goods**	As available on the shelf of the retailer	As available on the website of the retailer.

2.	**Price**	As shown on the label of the product. Under Indian Laws the price has to be the maximum retail price printed on the label. Therefore, the retailer can provide any discount which is below the said MRP.	As shown on the e-commerce website and has to abide by the same laws. Discounts can be provided upto the maximum retail price.
3.	**Price payment mechanism**	The payment can be through debit card, credit card, cash or other gift points accrued due to continued shopping.	The payment can be through debit card, credit card, cash or other gift points accrued due to continued shopping. The payment if made online is through a gateway.
4.	**Delivery of goods**	The goods can be taken immediately on payment of the price.	The goods are delivered through courier or postal services at the person's residence/doorstep
5.	**Warranty on goods**	The dealer who sells the goods endorses a warranty on the goods.	The seller of the goods endorses a warranty and puts it in the supply chain.
6.	**Return of goods**	In case of dissatisfaction the goods can be returned physically to the retailer.	In case of dissatisfaction the goods can be returned through an option on the website by availing the return policy to the website.
7.	**Risk of the goods being damaged.**	The goods can be returned to the retailer physically.	Goods can be returned through the return policy on the website.

27. The above comparison would show that there is no difference between physical sale of goods by a retailer or through e-commerce excepting that in the case of sale in the real world, the goods are seen and felt prior to purchase and delivery is made immediately on payment of price, but in the case of e-commerce the person does not see or feel the goods prior to purchase but only sees it on the website and on payment of price, the delivery is postponed to the date of delivery through courier.

28. The Petitioners submit that in the FDI Policy e-commerce has been treated in the following manner:

"**6.2.16.2 E-commerce activities**

Sector/ activity	% of Equity/ FDI cap	Entry Route
E-commerce activities	100%	Automatic

6.2.16.2.1 *E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well."*

29. The Petitioners submit that the upshot of the above discussion is as follows:

a. E-commerce is of two types B2C and B2B.

b. In a B2C transaction the presence of a consumer is a necessary feature. Once a consumer obtains the goods, it is a B2C transaction and the consumer has no concern with the manner the business is arranged by the seller.

c. In a B2B transaction the necessary feature is that the supply is to a business. Necessary interpretation can be adopted from the wholesale trade.

d. E-commerce being a world feature, the definition provided by the WTO must be accepted.

e. 100% FDI is allowed in e-commerce provided it is B2B e-commerce and not in retail trading.

C. E-COMMERCE ACTIVITY BY AN INDIAN ENTITY / COMPANY WITH ITS WEBSITE HOSTED WITHIN INDIA

30. The Petitioners submit that in order to protect the Indian market the Respondent Government allowed FDI in e-commerce activity upto 100% through the automatic route only in case of B2B transactions. The Petitioners submit that the latest consolidated FDI policy effective from 11.5.2015 in respect of e-commerce activity directs in paragraph 6.2.16.2.1 as follows:

> "***6.2.16.2.1*** *E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing*

restrictions on FDI in domestic trading would be applicable to e-commerce as well."

31. The Petitioners submit that the purport of the above regulation is that FDI can only be invited by a company involved in e-commerce activity as a B2B e-commerce alone. The Petitioners submit that allowing of FDI in B2B e-commerce would not affect the growth of the retail sector in India, which is totally different.

32. The Petitioners therefore submit that e-commerce by an Indian company having a website hosted within India being fully governed by the FDI policy, would be unable to execute any transaction between a Business to Consumer (B2C) or Consumer to Consumer (C2C) transaction and only allow Business to Business (B2B) transaction if any FDI is invited into the said entity.

33. The Petitioners submit that in view of the fact that the FDI Policy does not encourage or allow FDI in B2C e-commerce, very many e-commerce players in India have been arranging their affairs in a manner to circumvent the said regulation by inviting FDI into themselves and purporting themselves to be only a "market place". Through this arrangement the purport which is being given by such e-commerce players is that they are only an intermediary and facilitating a sale of goods owned by one to the purchaser without itself getting any

element of ownership into such goods. The Petitioners submit that in such an arrangement, the market place e-commerce player:

i. Displays the products on its website.

ii. Allows a shopping cart on the website where the purchaser can place the proposed to be purchased goods.

iii. Allows a payment gateway for the purchaser to make payment through different modes.

iv. Ultimately ensures delivery of goods under its own name to the consumer.

v. Allow return of the goods to itself.

34. The Petitioners submit that the United States Government while commenting upon the above FDI Policy of the government of India in respect of e-commerce has in its Report by United States International Trade Commission on Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy has commented as follows:

> *"In other areas of the retail sector, India allows foreign investment in business-to-business (B2B) e-commerce, but no foreign investment in business-to-consumer (B2C) e-commerce (box 7.1). Similarly, the Indian government allows 100 percent FDI in cash-and-carry wholesale trading.633 Foreign-owned direct selling companies, such as Amway, have faced restrictions from the Prize Chits and Money Circulation Schemes (Banning) Act of 1978. The legislation intends to prevent fraud (Ponzi schemes) but is vague;*

interpretation and enforcement have been left to states, which have varying interpretations. In 2006, an Indian state raided and seized property of a U.S. direct selling company that was operating in India with the approval of the FIPB

Case Study: Amazon in India—The Intersection of Retail, Wholesale, and E-Commerce

E-commerce in India is a rapidly growing sector. Increases in Internet and smartphone penetration have connected more Indians with online retailers as consumer comfort with purchasing online has increased with exposure. While significantly smaller than other regional e-commerce markets—India's e-commerce market is worth approximately $3 billion,635 while China's is worth approximately $300 billion636—the market is quickly attracting significant investment and is projected to grow by an order of magnitude to over $30 billion by 2020.637

Indian FDI policies complicate the landscape for foreign owned e-commerce giants like Amazon.com. As mentioned in this chapter, India currently does not allow foreign investment in business-to-consumer (B2C) e-commerce, though that policy may change under the new Modi government. Foreign investment is also capped at 51 percent in multibrand retailing. However, 100 percent foreign investment is allowed in single-brand retailing and business-to-business (B2B) e-commerce.

These complex investment caps have required Amazon to structure its activities in a commensurately complex way. First, to operate in the B2C e-commerce market, Amazon's website serves as an online marketplace for other retailers to sell their wares.638 Companies store their products in Amazon warehouses, but ownership of the actual product never transfers to Amazon; instead, the retailer pays Amazon a fee for the storage and distribution of its products and for access to Amazon's website as a selling platform.

Amazon also engages in single-brand retailing in India selling Amazon-branded products, with the Kindle being the most visible example. Amazon launched the Kindle Paperwhite in India in June 2013 by making it available for purchase in several Indian brick-and-mortar retailers, including Croma and Reliance Digital, among others.639 In order not to violate the prohibition on B2C e-commerce, Amazon-branded e-readers offered

> *through the Amazon.in website are actually sold by Indian retail firms640 and fulfilled by Amazon, meaning that an Indian retailer buys a Kindle, then pays Amazon a fee to sell an Amazon product on the Amazon website, while Amazon is also responsible for the storage and distribution of the Kindle at one of its warehouses Difficulties aside, Amazon appears committed to the Indian market. It recently announced a $2 billion investment in India, with Amazon CEO Jeff Bezos saying: "We see huge potential in the Indian economy and for the growth of e-commerce in India."*

The relevant pages of the said United States Government Report is annexed hereto as **Annexure-P9**

35. The above would show that even the foreign governments consider the regulation of the Government of India in respect of FDI in e-commerce to have been circumvented and approved by the Government of India for the B2C sector.

36. In a Report by United Nations Conference on Trade and Development (UNCTAD) titled "Information Economy Report 2015 (Unlocking the Potential of e-commerce for Developing countries)" also the United Nations has considered the e-commerce field for the general world and the FDI Regulations of India to mean that they do not prohibit "market place" e-commerce though it may well be B2C. A copy of the Report by the United Nations is annexed hereto as **Annexure-P10.**

37. In 2014, UNCTAD also made a world investment report 2014 as regards FDI in various countries of the world. In a Chapter as regards retail it was mentioned as follows:

> ***Changing industrial context**. The global retail industry is in the midst of an industrial restructuring, driven by three important changes. First, the rise of e-commerce is changing consumers' purchasing behaviour and exerts strong pressures on the traditional retail sector, particularly in developed countries and high-income developing countries. Second, strong economic growth and the rapid expansion of the middle class have created important retail markets in not only large emerging markets but also other relatively small developing countries. Third, competition has intensified, and margins narrowed, as market growth has slowed. In some large emerging markets, foreign retailers now face difficulties because of the rising number of domestic retailers and e-commerce companies alike, as well as rising operational costs due to higher real estate prices, for example.*

38. The above report shows that e-commerce is having a debilitating effect on retail in the physical world. The Petitioners therefore submit that encouragement only to e-commerce without giving support to the retail business would warp the entire market leading to closure of physical retail spaces and monopolization of the retail sector by e-commerce since e-commerce is not locations specific, products specific, is not limited by physical boundaries, is not limited by the space on the shelf, it can become free of all competition and kill the local shop keepers. The specific pages of the World Investment Report 2014 of UNCTAD is annexed hereto as **Annexure-P11**

39. On December 2014, the Research and Information Division of the Lok Sabha Secretariat prepared an Information Bulletin

having No.LARRDIS(EF)2014/IB-12 where it is mentioned as follows:

> *"7. Regulatory Issue*
>
> *As per the extant FDI policy, FDI is not permitted in B2C e-commerce. But 100% FDI is permitted under automatic route in B2B e-commerce. Research indicates that an estimated 70% to 80% of e-commerce companies are on life support and in dire need for funds. But faced with a double whammy of dried up capital and restrictions on FDI, some of these are forced to either shut shops or change business models from inventory model to a marketplace model* since marketplaces, by virtue of their very definition, do not fall under the ambit of the existing FDI norms.*
>
> *Majority of the bigger players have been left with no option but to work around FDI restrictions by setting up back-end B2B entities wherein 100% FDI is allowed. The foreign funding flows into such B2B companies which also hold the inventory while the front-end B2C companies are kept clear of FDI and only issue invoices and collect payments from customers. While these legal structures may be in line with the provisions of the FDI law, they may or may not be in accordance with the spirit with which the law was brought into existence. In other words, these restrictions have forced the companies into complicating their businesses by complicating their structures.*
>
> > **Flipkart, which was an inventory e-commerce player, changed its model to 'market place' in 2012 to adhere to the Indian FDI rules for online retail companies. Both Amazon and snapdeal operate on the pure market place model."*

A copy of the Information Bulletin No.LARRDIS(EF) 2014/IB-12 is annexed hereto as **Annexure-P12.**

40. The Petitioners therefore submits that for all practical purpose despite there being a prohibition on FDI in B2C e-commerce, the Government of India has allowed such FDI without any regulation in the B2C sector by recognizing

market place as a viable FDI recipient in the e-commerce activity under the FDI regulations. The Petitioners submit that the upshot of the above discussion is as follows:

a. Both e-commerce which is retail in cyberspace and multi brand retail in the physical space, achieve a common goal of supplying goods to the end consumer and therefore are "retail trade".

b. By terming an e-commerce activity as a "market place", the prohibition on FDI on B2C e-commerce is being avoided and World Trade Organization, the United Nations and the Indian Parliament have considered this to be a viable means to invite FDI in B2C e-commerce in India. The distinction between B2B ecommerce and B2C e-commerce is removed by allowing persons to adopt "market place" as a means to supply / sell goods to the consumer directly and thus achieve what retailers in the physical space also do.

D. E-COMMERCE BY AN INDIAN COMPANY BUT EXECUTING TRANSACTION BETWEEN TWO PARTIES WITHIN INDIA

41. The Petitioners submit that the FDI policy governs "*person resident in India*". Therefore, an Indian company is subjected to the limitations prescribed under the FDI Policy/ Regulations.

42. The Petitioners submit that certain Indian companies/ entities are involved in retail trade by proffering themselves to be only an "online market place" and representing themselves to be only intermediaries between a physical seller and a physical purchaser when ultimately the goods are being purchased by the consumer through the website either directly from the website or from an unseen source made available on the website.

43. The Petitioners submit that by this stratagem, such entities though involved in e-commerce by the definition of e-commerce by Word Trade Organization (WTO), are seeking to purport to the general world that they are not involved in such activity and therefore are not covered by the FDI Policy restrictions. The Petitioners submit that as per the WTO e-commerce simply means: -

> *"E - commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means"*

44. The Petitioners submit that as per the Organization for Economic Co-operation and Development (OECD) the definition of "e-commerce" is as follows:

> *"An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction*

> *can be between enterprises, households, individuals, governments, and other public or private organizations. To be included are orders made over the web, extranet or electronic data interchange. The type is defined by the method of placing the order. To be excluded are orders made by telephone calls, facsimile or manually typed e-mail."*

45. The Petitioners submit that on the basis of the above representations such entities have invited foreign direct investment within themselves and are purporting themselves to be within the law. The Respondents have also accepted the said position, and no legal action has been taken by the Government of India or by its arms against these entities.

46. The Petitioners submit that the Government of India on the basis of such activity came up with a discussion paper on e-commerce noting down the various factors in this regard and requested for comments by 30.1.2014. On 28.1.2014 the Petitioner No.1 sent its feed back to the Government of India on the discussion paper on e-commerce. A copy of the discussion paper alongwith the Respondent no.1's notification and the response dated 28.1.2014 are annexed hereto as **Annexure-P13 (Colly)**.

47. The Petitioner submits that the Government of India in the said discussion paper has recognized the "market place" model as a facilitator of e-commerce and has distinguished such e-commerce activity from "inventory based" model although no such artificial distinction exists in the FDI Policy.

By such adoption the Government of India has destroyed the distinction between the B2C e-commerce and B2B e-commerce. The Petitioners submit that this camouflaged B2C e-commerce model has been accepted by the Respondent Government by implication. The Respondent Government is arbitrarily and discriminatingly choosing to treat a B2C e-commerce as a B2B e-commerce only by accepting the artificial model of an online market place where ultimately the goods admittedly reach the consumer from business.

48. The Petitioners submit that the main recital to the discussion paper is lifted from the WTO Report but the words "shopping place" have been inserted instead of "shopping cart software" which is evident from the following comparison:

World Trade Organisation in its paper on Electronic Commerce, Development And Small, Medium-Sized Enterprises (Report No.WT/COMTD/W/193 dated 14.2.2013) PARA 14 while defining B2C	**Discussion Paper on e-commerce in India**
Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions. According to the IDC, global B2C transactions are estimated to reach US$1.2 trillion at the end of 2012, ten times less than B2B transactions. B2C e-commerce entails businesses selling to the general public typically	Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions. According to the IDC, global B2C transactions are estimated to <u>have reached</u> US$1.2 trillion at the end of 2012, ten times less than B2B transactions. B2C e-commerce entails businesses selling to the general public/ <u>e-catalogues</u>

through catalogues that make use of shopping **cart software**.	~~typically through catalogues~~ that make use of shopping ~~cart software~~ **place**.

49. The Petitioners submit that though in substance and in reality from the customers point of view, it is the e-commerce website which is the online store for the goods being sold to him, since the order is placed on it, goods are seen on it, the deliveries are also made with the name of the online store on the package and price is paid on the website to the website, huge discounts are offered by the website to the consumer in a flat manner irrespective of the quality or quantity of goods showing very well that it is the online market place which is ultimately in control of the goods and the stocks. Therefore an online marketplace is nothing but B2C ecommerce, the Respondents have shown a complete resilience to such FDI though no provision in the FDI Policy or the FDI Regulations allows invitation of such FDI.

50. The Petitioners submit that when a customer approaches the e-commerce website, it is not told to the customer that the goods shall be supplied by a particular person having no relationship with the e-commerce website and therefore for all practical purposes the customer enters into an electronic agreement with the e-commerce website which is responsible for

(i) representations as regards the goods

(ii) receipt of payment from the customer

(iii) delivery of the goods to the customer.

All three facts are necessary for the sale to be concluded and therefore it is clear that, the e-commerce B2C retailer though a "market place" owner having invited FDI is validly operating the India. Therefore to provide a level playing field to the petitioners (who have not circumvented the law) deserve to be allowed to obtain FDI to remain in competition with such online market place e-commerce models, and the restrictions put through the FDI Policy on the Petitioner deserve to be ignored.

51. The Petitioners submit that the major examples of such e-commerce activity who have FDI are flipkart.com, snapdeal.com, quickrr.com, localbaniya.com, myntra.com, jabong.com etc.

52. The Petitioners submit that most of these market place models, source their goods from one or two major suppliers having a multi brands of variety of goods. The Petitioners submit that by this major resourcing of goods from a particular company (whether owned and controlled by the website owner or not), results in an immediate killing of small store owners in the local cities because due to convenience a

person need not go to the local store and can purchase goods through the website of a wider variety and prices.

53. The Petitioners submit that the above examples of market place models operating in India having huge foreign direct investment within them are aimed at killing the Indian local market or the retailers in the physical world.

54. The Petitioners seeks to rely upon the webpages of various online market place e-commerce website which are in reality B2C as **Annexure-P14**. The Petitioners crave leave to refer to and rely upon the documents to prove the above during the course of arguments.

55. The Petitioners therefore submit that the upshot of the above discussion is:

    a. That an online market place is nothing but B2C e-commerce because the ultimate control of the goods prior to the sale is that of the market place who offers flat discounts irrespective of the nature, category, character, or quantity of the goods. Ultimately the goods are being sold from a business to consumer through the website. Internationally there is no such distinction between an online market place as being treated as B2B e-commerce.

b. The Government of India's toleration of FDI in online market places leads to an unmistakable conclusion that the Respondent does not have any objection to FDI in the B2C sector if the stratagem of market place is employed. The Petitioners are ready and willing to employ this stratagem to receive FDI in their businesses and therefore the Petitioners seek parity with such online market place players.

c. The Respondents have stretched the definition of B2B e-commerce and diluted the definition of B2C e-commerce to somehow accommodate online market places as being validly achieving FDI and thus Petitioners to remain in competition with such online market place players deserve to be treated equally and the Respondents ought to allow FDI by removing the restrictions put upon them in the FDI Policy/ FDI Regulations.

E. E-COMMERCE BY A FOREIGN COMPANY BUT EXECUTING TRANSACTION BETWEEN TWO PARTIES WITHIN INDIA

56. There is only one exception of a "foreign company" being also governed by FDI Policy i.e. where it includes a Company having an office, branch or agency in India owned and controlled by a person resident outside India as per Section 2(v)(iii) of FEMA.

57. In Section 2(42) of the Companies Act 2013 "foreign company" has been defined as follows:

> *"(42) "foreign company" means any company or body corporate incorporated outside India which—*
>
> *(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
>
> *(b) conducts any business activity in India in any other manner."*

58. Under Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014 defines "electronic mode" as follows:

> *"2(1)(h) "electronic mode", for the purposes of clause (42) of section 2 of the Act, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-*
>
> *(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;*
>
> *(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;*
>
> *(iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;*
>
> *(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and*
>
> *(v) all related data communication services,*
>
> *whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise"*

59. The Petitioner therefore submits that reading the definition of "persons resident in India" in Section 2(v) of FEMA and 2

(42) of the Companies Act, 2013, it is clear that any person doing business in India in the electronic mode would be so governed by Indian law i.e. a combination of both FEMA and the Companies Act.

60. The Petitioners submit that "e-commerce" is electronic commerce of all kinds. It would include payments made for goods / services through the internet. The Petitioners submit that any e-commerce transaction which is not business to business (B2B), would be FDI non-compliant. The Petitioners submit that no distinction has been made between e-commerce by a foreign company or by an Indian company.

61. The Petitioners submit that a consumer can visit the above websites and after browsing through the variety of goods as also the prices, can enter into an agreement to purchase the goods through active assistance of the platform in allowing payments through the said platform and also the delivery of the goods being organized only by the said platform. The Petitioners submits that for the consumer the platform is the front end of the seller. The seller remains unseen and without any actual identification with no contact with the consumer. Once the goods are placed on the website, they come under the control of the website who on its own offer discounts or set terms of purchase, sale, delivery or payment. The Petitioners submit that goods however reached the consumer from this unseen source and the transaction is

consummated by the consumer making payment for the same either through a debit card, credit card on the payment gate-way provided by the website or even cash on delivery.

62. The Petitioners submit that the above transaction through the above platforms is also "e-commerce". However, because the platform is owned by a foreign company it is escapes the rigour of the Indian authorities under the FDI Regulations. In a situation where the e-commerce website would in a circuitous manner avoid the FDI policy in spirit would be where the platform that invites FDI would sell the goods to its retail arm and that retail arm would finally sell the goods to the consumer.

63. The Petitioners submit that in order to circumvent the above prohibition these e-commence platforms which are owned by foreign companies have a full businesses established within India by dividing the sale and purchase transaction into different legs like (a) for payment purposes a separate entity is established (b) for transportation / delivery services a separate entity is established (c) for making payments to the seller / vendors after deducting commission a separate entity is established. But if seen as a whole, it is one entity selling indirectly to a consumer in India, though there is a foreign holding either directly or indirectly of such an entity. Such complex structures achieve the simple final purpose of a

delivery system that facilitates through its platform goods to be delivered from the seller to the buyer.

64. The Petitioners submit that the FDI restrictions on e-commerce are not being triggered by the Respondents, though the entire e-commerce business is conducted in India converting small shopkeepers into mere supplier to the website who ultimately takes payment and delivers the goods to the consumer.

65. The Petitioners submit that most of these B2C e-commerce website allow sales only in India. Therefore, they may have any structure of a web of companies or entities within India or outside India, since effectively the business conducted by them is only within India they deserve to be subject to subject to Indian laws. The Petitioners submit that no FDI limitations occur in respect of foreign entities, yet the Indian market is being affected by such operations. The Petitioners deserve to be put on the same level playing field in respect of the business being conducted within India by such foreign entities by allowing unrestricted FDI into retailers in the physical space.

66. The Petitioners submit that there is no way the Indian Legal system can stop the operations of e-commerce. Yet, the Petitioners submit that being in the physical world doing the same business, the petitioner cannot be discriminated in

respect of application of such laws which make the Petitioners, operations disadvantaged and uncompetitive with these e-commerce operators.

67. The Petitioners submit that examples of such websites owned by foreign companies yet allowing supply of goods to Indian consumers through the above stratagem are amazon.com, ebay.com etc.

68. The Petitioners submit that though B2C e-commerce cannot be done by foreign websites due to the restrictions in single brand retail in the FDI Policy, yet such restrictions are being avoided due to the special nature of the internet which knows no boundaries.

69. The Petitioners submit that the United States Government itself in its report has delineated the method being adopted by these foreign websites who are freely selling in India despite there being restrictions on FDI.

70. The Petitioners therefore submit that the upshot of the above discussion is that there is virtually no restriction on a foreign website allowing retail trade in India from one person to another within India though the entire control of the goods, sale, delivery, price is in the hands of website and there is no way that a consumer can directly approach the seller for getting the goods.

F. **E-COMMERCE BY A FOREIGN COMPANY HAVING A WEBSITE HOSTED OUTSIDE INDIA ALLOWING SALE OF GOODS INTO INDIA THROUGH IMPORTATION**

71. The Petitioners submit the Reserve Bank of India RBI/2014-15/10 Master Circular No. 6 /2014-15 dated 1.7.2014 being "Master Circular on Miscellaneous Remittances from India – Facilities for Residents" stipulates as follows:

> *A.15 International Credit Cards*
>
> *15.1 The restrictions contained in Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 will not be applicable for use of International Credit Cards (ICCs) by residents for making payment towards expenses, while on a visit outside India.*
>
> *15.2 Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).*
>
> *15.3 ICCs cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.*
>
> *15.4 There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.*
>
> *15.5 Resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad, as permissible under extant Foreign Exchange Regulations, are free to obtain ICCs issued by overseas banks and other reputed agencies. The charges incurred against the card either in India or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the card holder has a current or savings account. The remittance for this purpose should also be made directly to the card issuing agency abroad, and not to a third party.*

> *15.6 The applicable limit will be the credit limit fixed by the card issuing banks. There is no monetary ceiling fixed by the Reserve Bank for remittances, if any, under this facility.*
>
> *15.7 Use of ICC for payment in foreign exchange in Nepal and Bhutan is not permitted.*

A copy of the "Master Circular on Miscellaneous Remittances from India – Facilities for Residents" stipulates is annexed hereto as **Annexure-P15.**

72. The Petitioners submit that the above master circular of the Reserve Bank of India allows an Indian Resident while being resident in India, to use the credit card for foreign payments in foreign exchange on the internet for sourcing of goods and services. The only limitation so provided is that the sourcing of such goods / services is allowed by the foreign trade policy. The Foreign Trade Policy allowed free import of all goods except certain prohibited items. The imports can be made through courier service delivered at the door step of the consumer. In this regard, the following paragraph of the Foreign Trade Policy is as follows:

> *"2.30 Import through courier service Imports through a registered courier service are permitted as per Notifications issued by DoR. However, importability / exportability of such items shall be regulated in accordance with this FTP/ ITC(HS)."*

73. The Petitioner therefore submits that in the e-commerce world, the restriction sought to be imposed through FDI

Regulations is of no effect because by the above policy of the Respondent, all imports of goods to the consumers doorstep are allowed. Thus, there is B2C e-commerce which is allowed by the Respondents if the transaction is through an international credit card and it achieves importation of permitted goods. The Petitioners submit that slowly such transactions are increasing leading to a non-level playing field between the retailers in India and retailers from foreign land. The Petitioner, therefore, submits that the artificial restriction maintained on Indian retailers while allowing retail business being generated from foreign lands leads to loss of foreign exchange non – generation of employment, loss of revenue for the public exchequer, loss of industrialization and infrastructure development.

74. The Petitioners however submits that when goods are purchased/ imported by a consumer directly into his house, apart from loss of foreign exchange, there is a direct avoidance of the above enactments which are meant to protect the interests of the consumers. The Petitioners, therefore, submits that such importation of the goods does not help the economy in any manner and being totally unregulated, may harm consumer interests as well. In comparison, if a retailer is required to put imported goods in his shop, the goods are required to be imported through a

proper channel has to comply with the above two enactments before it is allowed to be put on the shelf.

75. The Petitioners submit that in respect of electrical goods, though India has 220 volt system, it is possible for a consumer to purchase any electrical goods through a myriad of websites from other country where the system is that of 110 volts. Not knowing the difference, a consumer may get seriously injured by the burning of the electrical equipment if connected to the 220 volt Indian system directly. For this purpose the custom regulations prohibit importation of any electrical equipment, which is not so compatible with the Indian system. However, this limitation is impossible to maintain when it comes to e-commerce by a foreign website which is owned by a foreign company. Interested sellers, the world over, therefore, have an unregulated platform to sell goods to interested buyers, anywhere in the world without the goods passing through proper channels that are placed in the physical world to protect and benefit the consumer. Such a situation would entail a shift in liability pertaining to the goods from the seller to the buyer. The doctrine of "caveat emptor" would be stretched too far. This situation is simply avoided by the physical inspection of goods at the retail shop.

76. The Petitioners submit that it is possible for a person to import cloths through foreign websites which promote multi

brand cloths. The Petitioners therefore submits that a person in India can purchase cloths of any brand from a particular website without it being governed by Indian laws or Indian regulations.

77. The Petitioners submit that a foreign company's website can sell goods of multiple brands of multiple varieties without any restrictions a citizen can purchase these goods without being affected by the location of the said goods because importation of such goods is eased by the platform by delivering the goods through courier services and handling the custom issues itself by the payment of small charges such as import duty and custom fines.

78. The Petitioners submit that examples of such e-commerce websites which are fully foreign owned and operating in foreign territory yet supplying goods to Indian customers as and by way of imports into India are amazon.com, e-bay.com, zinio.com, yoox.com etc.

G. FDI IS PROHIBITED IN A COMPANY INCORPORATED IN INDIA WHICH DOES SINGLE BRAND OR MULTI BRAND RETAIL BUSINESS IN THE PHYSICAL WORLD EVEN IF SUCH COMPANY WANTS TO HAVE A PARALLEL E-COMMERCE PLATFORM.

79. The Petitioners submit that its members are mainly retailers in the physical world. They are B2C operators. By the FDI Policy, foreign direct investment in such a retailer is highly regulated as mentioned hereinabove. The FDI is regulated in

such a manner that it is in fact defeated. However, even if the Petitioners members are able to invite FDI and adhere to all the conditions mentioned in the FDI Policy then by the operation of the FDI policy itself it becomes impossible for the Petitioner's members to start an e-commerce platform for the same goods. This is because e-commerce in B2C sector is prohibited. The conditions imposed under the FDI Policy in Paragraph 6.2.16.4 are impossible to adhere to and yet achieve foreign direct investment into the company. The Petitioners submit that the following is a table showing impossibility of each of the conditions having been put by the FDI Policy:

S.no	**Condition in the FDI Policy as regards multi brand retail trading**	**Though there is a complete prohibition on FDI in B2C e-commerce yet the same is being carried out and the conditions put against FDI on multi brand retail trading is discriminatory and unworkable.**
(i)	Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.	The online market place websites are selling branded products. However, a prohibition has been put on retailers.
(ii)	Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.	This condition does not exist on B2C e-commerce in the market place. This condition limits the availability of FDI in retail trading and therefore is

		discriminatory.
(iii)	At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.	There is no condition on B2C ecommerce in the market place which mandates such development of the back end infrastructure or any capital expenditure. This condition is therefor discriminatory.
(iv)	At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry	This condition does not exist on B2C e-commerce market place player yet it has been mandated against a physical retailer and therefore there is a complete discrimination in this regard. The back end suppliers to the e-commerce B2C market place players are not micro, small or medium industries but store houses where huge inventories of multi branded products.

	shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US $ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.	
(v)	Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.	No such condition is put on B2C e-commerce market place players creating a discriminatory atmosphere.
(vi)	Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the	This condition is unachievable in the case of e-commerce in the B2C because internet penetration cannot be limited especially where such operations can be done through mobile devices. The e-commerce B2C market place players have started moving out of web based transactions and converting themselves

	concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.	into application based players where the location of the webpage become irrelevant.
(vii)	Government will have the first right to procurement of agricultural products.	The Petitioners have no objection to this but there is no parity maintained on the said condition in respect of B2C e-commerce market place players.
(viii)	The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc.	NO State Government or union territory has objected to the B2C e-commerce market place players yet retailers in the physical world are not being allowed by the States by utilizing this condition.

(ix)	Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multibrand retail trading.	Though B2C e-commerce market place players are not prohibited from entering the market, there is a reverse prohibition on retailers in the physical space from entering their market. This clearly warps the level playing field.
(x)	Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval."	The B2C e-commerce market place players are not being subjected to these conditions.

80. The Petitioners submit that while the above conditions of the FDI Policy upon retailers in the physical world are impossible to comply with for achieving FDI, the e-commerce players have sought to achieve FDI or are operating from foreign land in the Indian market without any difficulty by purporting themselves to be "a market place model" and not an "inventory based model". Essentially, there is no difference between a retailer in the physical world and an e-commerce player involved in retail sales to the consumer directly. Both these models are B2C. The Petitioners submit that in the case of a retailer in the world, an inventory is a necessity without which the retailer cannot sell to the customer directly at the shop.

81. The Petitioners submit that this artificial distinction created by the e-commerce players to somehow explain away the restrictions in the FDI policy on e-commerce has been discriminatingly and arbitrarily accepted by the Respondents and their business has been termed as legal. The Petitioners submit that they seek parity with the said e-commerce market place retailers and accordingly the Respondents deserve to be directed to allow foreign direct investment in the Petitioners members for their retail business. The Petitioners submit that if the market place model is so accepted by the Respondents it ought to be so accepted even for the Petitioner's companies and on that basis the Petitioners should be entitled to rearrange their business in a manner to achieve the said market place model even in the physical world.

82. The Petitioners submit that if the Respondents do not allow the same market place model, from being adopted by the retailers in the physical world, it would amount to a direct discrimination against the Petitioners especially in view of the fact that the objective being achieved by both e-commerce market place model and a physical market place model would be to sell goods to the consumer. Both the models are B2C and therefore a restriction on the physical world would be directly contrary to Article 14 of the Constitution of India.

83. The Petitioners submit that alternatively in case the market place model of the e-commerce player is to be sustained as legal and valid despite there being a complete prohibition under paragraph 6.2.16.2.1 of the FDI Policy, the restrictions put against the Petitioners in Paragraph 6.2.16.4 in respect of FDI deserves to be set aside. The Petitioners submit that they are entitled to a level playing field with an e-commerce player whether such a player is (i) a market place model (ii) foreign website allowing sales from one Indian to another (iii) foreign website allowing sales through imports. The Petitioners submit that all these three e-commerce players are B2C from any angle looked at and since the Petitioners' members are also B2C but in the physical world, they deserve to be placed in competition at the same level with the e-commerce player.

84. The Petitioners submit that in a recent judgment passed by the Competition Commission of India in Case No.80 of 2014 between *Mohit Manglani vs. M/s. Flipkart India Pvt. Ltd.*, the Competition Commission has noted the contentions of the e-commerce players as follows in paragraph 9.

> *"9. ... It was also contended that online and offline retail do not constitute separate relevant market as they are merely different channels of distribution which are substitutable. It was submitted that the product purchased, whether from online portal or through offline brick and mortar retail outlets is fundamentally the same and merely the distribution channel through which such production is procured differs."*

85. After considering the above arguments of the e-commerce players purporting themselves to be market place, the Competition Commission came to the following conclusion :

> *"16. The bare perusal of the agreement on the touchstone of the factors laid out above suggests that such agreements do not result into AAEC. It does not seem that such arrangements create any entry barrier for new entrants. It seems very unlikely that an exclusive arrangement between a manufacturer and an e-portal will create any entry barrier as most of the products which are illustrated in the information to be sold through exclusive e-partners (OPs) face competitive constraints. For example, mobile phones, tablets, books, camera etc., are neither alleged nor seem to be trodden by monopoly or dominance. Further, it does not appear that because of these exclusive agreements any of the existing players in the retail market are getting adversely affected; rather with new e-portals entering into the market, competition seems to be growing.*
>
> *17. Further, the Commission observes that online distribution channel by the OPs provide an opportunity to the consumers to compare the prices as well as the pros and cons of the product. Furthermore, through the option of delivery right at their door steps consumers have the opportunity to accept the purchase at their convenience and do not need to set aside a couple of hours at a stretch to make the purchase through a brick-and-mortar retail outlet. Therefore, at this stage, it does not appear that the exclusive arrangement between manufacturers and OPs lead to AAEC in the market."*

A copy of the order of Competition Commission of India is annexed hereto as **Annexure-P16.**

86. The Petitioners therefore submits that there is no distinction between an e-commerce market place and a retailer in the physical world because both achieve retail sales to the consumer. The Petitioners submit that accordingly the

Respondent government cannot be allowed to treat equals unequally and put restrictions on the retailers in the physical worlds whereas allowing the e-commerce players to circumvent prohibitions engrafted in the FDI Policy through stratagem.

87. The Petitioners submit that in case FDI is allowed in the retailers in the physical world, it would result in all advantages mentioned in Paragraph 7.1 of the discussion paper on e-commerce in India which is as follows:

> *"7.1 Following are stated to be the major advantages of FDI in the sector:*
>
> *i) Boost to the infrastructural development: Increased capital will help to establish supply chain, distribution system and warehousing.*
>
> *ii) Impetus to manufacturing sector: Growth in retail sector will have cascading effect in the manufacturing sector which will positively contribute to overall growth of economy and job creation.*
>
> *iii) More efficient supply chain management: Will reduce the need for middlemen leading to lower transaction costs, reduced overhead and reduced inventory and labour costs.*
>
> *iv) Adopting best global business practices: Will lead to better work culture and customer service.*
>
> *v) Increased outreach: Will provide increased access to buyers/sellers, allow MSMEs and artisans to reach out to customers far beyond their immediate location, both locally within India and abroad.*
>
> *vi) Traceability and transparency: Will not only empower consumers with information and data but also help in better compliance of regulatory framework.*
>
> *vii) Reduced costs: On marketing and distribution, travel, materials and supplies will benefit businesses.*

> *viii) Improved customer service: providing more responsive order taking and after-sales service to customers and competitive pricing."*

88. The Petitioners submit that in case FDI in B2C e-commerce is directly allowed or the market place model is allowed to continue with other foreign players also entering the retail market as mentioned hereinabove, the small shop owner would be eliminated because of the financial strength achieved by an e-commerce player through FDI, sourcing of large quantities of goods by one manufacturer for immediate distribution through the e-commerce portal, bringing to the consumer such uneconomical discounts that for the retailer in the physical world to sustain operations at exorbitant rents would pulverize the retailer in the physical world.

89. The Petitioners therefore submits that in order to have effective and balance growth in the market it is necessary for the Respondents to remove the discrimination amongst the B2C players whether they are in the physical world or in the virtual.

90. The Petitioners submit that Paragraph 6.2.16.4 of the FDI Policy which concerns "multi brand retail trading" having an FDI cap of 51% through the government route and having various conditions is discriminatory and deserves to be set aside. The Petitioners submit that multi brand retail trading deserves to be put at the same level of e-commerce market

place model which is allowed by the Respondents to be FDI compliant though the transactions are B2C. The Petitioners submit that multi brand retail trading deserves to be put at the same level at which the Respondents allow importation of goods through the internet by courier service against payment through an international credit card without any limits. The Petitioner, therefore, submits that in order to allow the Petitioner's members to compete with such e-commerce which is ultimate retail trade in B2C sector, the Petitioner's members deserve to be allowed to obtain foreign direct investment without the limitation put in paragraph 6.2.16.4 (1)(ii), (iii), (iv), (v), (vi),(viii), (ix) and (x).

91. The Petitioners submit that while the Respondents have allowed e-commerce in multi brand retail trade through a so called "market place" format, the Petitioners who are in the same format, but being in the physical world are not allowed the same level playing field.

CAUSE OF ACTION

92. On 7.1.2014, the Respondent No.1 proposed discussion paper on e-commerce in India seeking comments/ views. One of the agendas was FDI in B2C in e-commerce.

93. There is no difference between B2C e-commerce and multi brand retail trading. The only difference is in the mode adopted for making the goods accessible to the consumer.

Both B2C e-commerce and multi brand retail trading achieve the common purpose of making sales to the end consumer. However, the discussion paper on e-commerce in India while referring to the WTO paper seeks to artificially distinguish between e-commerce with the "inventory module" where the website owner has the inventory of goods to be sold and e-commerce with the market place module where the goods are sold through the website by another person to the consumer but the offering, the payment and the delivery are all in the hands and control of the website. The Petitioners submit that surprisingly there is no comment of the Respondent Government in respect of the existing FDI in B2C e-commerce in the market place module. The Petitioners submit that this silence of the Respondent Government shows that such FDI is approved through implication but the Petitioners' ability to achieve the same FDI in itself with the same module is not even put up for discussion by the Respondent Government.

94. The Petitioners and various other persons provided responses to the Government of India to the above discussion paper which are annexed hereto as **Annexure-P17.**

95. On 25.6.2014, and 17.11.2014, the Petitioners sent representations to the Respondent bringing to the notice of

the Respondent the discrepancies in the FDI Policy with regard to the "market place" model in B2C e-commerce transactions. Copies of the representations dated 25.6.2014, and 17.11.2014 are annexed hereto as **Annexure-P18 (Colly).**

96. On 18.7.2014, in the Lok Sabha a question was asked in respect of FDI in e-commerce. To the said question the Government of India answered as follows:

> *"(a): As per extant FDI policy, FDI up to 100% under the automatic route is permitted in B2B e-commerce activities. The present policy does not permit retail trading, in any form, by means of e-commerce, for companies with FDI engaged in the activity of single/multi brand retail trading.*
>
> *The following announcement in respect of FDI with reference to manufacturing sector was made by FM during his Budget Speech on 10.07.2014:*
>
> *"FDI in the manufacturing sector is today on the automatic route. The manufacturing units will be allowed to sell its products through retail including E-commerce platforms without any additional approval".*
>
> *Government takes into consideration the concerns of all stakeholders including domestic industry and consumers while formulating FDI policy. Safeguards are put into the FDI policy wherever necessary.*

A copy of question asked dated 18.7.2014 in Lok Sabha and the answer provided is annexed hereto as **Annexure-P19.**

97. On December 2014, the Research and Information Division of the Lok Sabha Secretariat prepared an Information Bulletin

having No.LARRDIS(EF)2014/IB-12 where it is mentioned as follows:

> *"7. Regulatory Issue*
>
> *As per the extant FDI policy, FDI is not permitted in B2C e-commerce. But 100% FDI is permitted under automatic route in B2B e-commerce. Research indicates that an estimated 70% to 80% of e-commerce companies are on life support and in dire need for funds. But faced with a double whammy of dried up capital and restrictions on FDI, some of these are forced to either shut shops or change business models from inventory model to a marketplace model* since marketplaces, by virtue of their very definition, do not fall under the ambit of the existing FDI norms.*
>
> *Majority of the bigger players have been left with no option but to work around FDI restrictions by setting up back-end B2B entities wherein 100% FDI is allowed. The foreign funding flows into such B2B companies which also hold the inventory while the front-end B2C companies are kept clear of FDI and only issue invoices and collect payments from customers. While these legal structures may be in line with the provisions of the FDI law, they may or may not be in accordance with the spirit with which the law was brought into existence. In other words, these restrictions have forced the companies into complicating their businesses by complicating their structures.*
>
> > **Flipkart, which was an inventory e-commerce player, changed its model to 'market place' in 2012 to adhere to the Indian FDI rules for online retail companies. Both Amazon and snapdeal operate on the pure market place model."*

A copy of the Information Bulletin No.LARRDIS(EF) 2014/IB-12 has already been annexed hereto as Annexure-P12.

98. The Petitioners submit that the above information bulletin of the Lok Sabha Secretariat itself shows that the Respondents are sympathetic to B2C e-commerce players who have

obtained FDI for their survival but the Respondent Government has not put the Petitioners at the same level playing field by allowing FDI in a restricted manner. The Petitioners submit that FDI in market place model of e-commerce players has the same effect on the general market which FDI in the retail sector would have.

99. On 28th April 2015 the Respondent No.1 invited the stakeholders for a consideration of FDI Policy on e-commerce sector on 14.5.2015. A copy of the email received by the Petitioners from the Respondent No.1 in this regard is annexed hereto as **Annexure-P20.**

100. On 12.5.2015, the Petitioners wrote back that both e-commerce and retailers in the physical world deserve to be treated at par and accordingly the consideration should be for both the players. A copy of the representation made by the Petitioner on 12.5.2015 is annexed hereto as **Annexure – P21.**

101. On 12.5.2015, the Respondent No.1 issued the updated FDI Policy but there was no change in the same as regards e-commerce, single brand retail or multi brand retail.

102. On 14.5.2015, the Economic Times reported that the Respondent No.1 had held a meeting with stakeholders in the e-commerce sector including Flipkart and snapdeal but it was positioned only as a first meeting. A copy of the

newspaper report is annexed hereto as **Annexure-P22.** The Petitioners submit that their case has been totally ignored and the Respondents have refused to recognized the level playing field which both the sectors are entitled to.

103. The Petitioners are therefore filing the present writ petition on the following amongst other grounds :

GROUNDS

(A) The Petitioners submit that the Respondents' acceptance of FDI as being legal and valid in B2C e-commerce players despite there being prohibitions in the FDI Regulations, by creating an artificial distinction between e-commerce players with an inventory based model and e-commerce players with market place based model, creates a non-level playing field in breach of Article 14, 19,(1)(g) and 21 of the Constitution of India amongst such players and the single brand/ multi brand retail traders in the physical space who have been restricted from inviting Foreign Direct Investment.

(B) The Petitioners submit that category "e-commerce activities" as mentioned in Serial No.16.2 of the FDI Regulations does not create any sub-category of e-commerce players in respect of inventory based and market place based players. The petitioners submit that since both such e-commerce players are in "retail trading",

because goods are ultimately delivered/sold to the consumer, the Respondents' acceptance of FDI in such market place based e-commerce players (dehors the FDI Regulations), the Respondents deserve to be directed to provide a level playing field to the Petitioners in respect of such FDI without any restriction whatsoever.

(C) The Petitioners submit that the Lok Sabha Secretariat prepared an Information Bulletin having No.LARRDIS(EF)2014/IB-12 dated Dec. 2014 clearly allows FDI in e-commerce activities which are in the market place model without any restriction whatsoever. Thus, the petitioners also deserve to be treated at par with such FDI in B2C e-commerce activities.

(D) The Petitioners submit that the restrictions puts by the Respondents in Serial No.16.4 and 16.5 of the FDI Regulations which concerns retailers in the physical world deserve to be set aside because the Respondents while maintaining a full prohibition of FDI in e-commerce activities in the B2C sector, has sought to allow FDI in market place B2C e-commerce.

(E) The Petitioners submit that the restrictions put on the Petitioners in respect of FDI in multi brand retail trade under the FDI Regulations are clearly irrational, discriminatory, arbitrary having no nexus with the objective

to be achieved and in fact is anti development. The reasons provided by the Respondent as advantages for FDI in e-commerce in the discussion paper published by the Respondent, squarely applies to the Petitioners themselves as a ground for setting aside the restriction put on FDI in multi brand retail.

(F) The Petitioners submit that there is no difference between retail trading and the so called market place e-commerce B2 C players as mentioned hereinabove. Therefore, both cannot be treated at a different level playing field in respect of FDI.

(G) The Petitioners submit that the Respondents are arbitrary and illegally creating artificial distinction between different market players when that World Trade Organization, and other Word Organization do not consider any such distinctions being applicable amongst retail traders of any mode.

(H) The Petitioners submit that the Respondents have sought to allow 100% FDI in B2C e-commerce players only by terming them as "market place" players de-hors the FDI Regulations is arbitrary and discriminatory manner.

(I) The Petitioners submit that foreign companies having foreign websites are allowed to operate in India with transactions between consumers and the shopkeeper

through the said websites which also destroys the level playing field to which the petitioners are entitled.

(J) The petitioners submit that the allowing of importation of goods from foreign countries without theire being any restriction through payment mode of credit cards, debit cards etc. destroys the entire basis of the restrictions under the FDI Regulations upon the retail traders in the physical space.

(K) The Petitioners submit that there cannot be any restrictions which can be sustained on FDI in the multi brand retail traders in view of the changed market situations where e-commerce is taking over the business environment in a manner that the existing businesses in the physical world are being made unviable through infusion of unmonitored FDI into such e-commerce place.

(L) The Petitioners submit that in case e-commerce players involved in the market place model are allowed to obtain FDI then to maintain parity, multi brand retail traders operating in such similar market place model also deserves to be allowed to obtain FDI without any restriction or regulation. The Petitioners therefore submits that the Respondent deserve to be directed to provide parity and remove discrimination under Article 14 of the Constitution of India.

(M) The Petitioners submit that the World Trade organization and the United Nations do not distinguish between online market places and B2C e-commerce. The Petitioners submit that the Government of India however considers online market places as not being B2C e-commerce and also does not clearly state that it would amount to B2B e-commerce. The Petitioners submit that online market places are essentially B2C e-commerce because (i) the goods are displayed electronically by the website owner (ii) they are made available to sale by the website owner (iii) huge flat discounts are offered irrespective of the quality, category, quantity or characteristics of the goods by the website owner (iv) the prices accepted on the website (v) the delivery of the goods is made / arranged by the website owner. Thus, the online market place player being fully in control of the goods till the same are delivered at the doorstep of the consumer, cannot be allowed to avoid being termed as a B2C e-commerce player. The Government of India however once accepts FDI in such online market places, it cannot discriminatingly prohibit or disallow FDI in retail trade in the physical world. This would be clearly arbitrary, discriminatory and illegal.

(N) The Petitioners submit that while the Respondents are having consultation only with e-commerce players for formulating an FDI Policy for them, the Petitioners are

being discriminated because e-commerce is only a subset of retail trade and accordingly the entire retail trade deserves to be considered by the Respondent Government as a common whole. The Respondents ought not to be allowed to create artificial compartments amongst players in the retail trade to treat such players differently and discriminatingly to deny them a level playing field in the market.

104. The Petitioners submit that this Hon'ble Court has the territorial jurisdiction to entertain the present Writ Petition because the Respondents are situated within the territorial jurisdiction of this Hon'ble Court.

105. The present Petition is being filed on the principles of Order I Rule 8 of the Code of Civil Procedure, 1908 in representative capacity by the Petitioner No.1 of the fundamental rights of its members and for avoiding multiplicity, separate petitions are not being filed by the member individually.

106. The Petitioners submit that it has not filed any other Writ Petition or appeal before this Hon'ble Court or the Hon'ble Supreme Court or any other court.

107. The Petitioners crave leave to add/alter/modify any other ground(s) in the course of proceedings with the leave of this Hon'ble Court.

PRAYER

It is most respectfully and humbly prayed that this Hon'ble court may be pleased to;

a) pass a writ of mandamus or any other writ, order or direction of like nature, directing the Respondents to remove the

discrimination and provide a level playing field for the Petitioners and their members who are involved in the business of purchase and sale of goods, in the physical world, with persons directly or indirectly, involved in ecommerce which involves a Shopping Cart Software and a Payment Gateway, in inter alia the marketplace format, alongwith Foreign Companies as per S. 2(42) of the Companies Act, 2013 doing business electronically in India, in respect of Foreign Direct Investments into the Petitioners Members and accordingly the FDI Regulation under the Foreign Exchange Management Act be so construed to equate both the trades;

b) Pass a writ of certiorari or any other writ, order or direction of like nature, consequentially, setting aside paragraph 6.2.16.4 (1)(ii), (iii), (iv), (v), (vi),(viii), (ix) and (x) of the Consolidated FDI Policy dated 11.5.2015 having No. IPP F. No. 5(1)/2015-FC-1 and consequently set aside the similar Clauses in Annexure-B of FDI Regulations ;

c) Pass a writ of mandamus or any other writ, order or direction of like nature, and direct the Respondents to remove the restrictions upon the Petitioners in respect of Foreign Direct Investment into them if the Petitioners employ the market place model for their operations, to bring them at par with e-commerce players employing the same market place model as per information bulletin no.LARRDIS(EF)2014/IB-12 dated

December 2014 issued by the Lok Sabha Secretariat Research and Information Division;

d) pass any other and further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

New Delhi
Filed on :18.5.2015

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Gautam Jain son of Sh. V.K. Jain aged about 36 years, authorized signatory of the Petitioner No.1 Association, having its office at 111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai, at present at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Authorised Signatory of the Petitioner No.1 Association and I am acquainted with all the facts and circumstances of the case and I am duly authorized to swear the present affidavit.
2. That I say that I have read and understood the contents of the accompanying Writ Petition and say that the facts stated therein are true and correct to my information as derived from the record of the case.
3. That I say that the annexures annexed to the Writ Petition are true copies of their respective originals.

DEPONENT

Verification:

I, the above named deponent do hereby verify at New Delhi on this 18th day of May 2015 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Mahesh Khimji Shah, son of Sh. KHIMJI R. SHAH aged about 48 years, Director, of the Petitioner No.2 Company - Aishwarya Design Studio Pvt. Ltd., having its office at Shop No. 1, Ruby House, Irla Society Road, Opp Alfa – 3, Vile Parle (East), Mumbai- 400056 at presently New Delhi do hereby solemnly affirm and state as under:

1. That I am the Director of the Petitioner No.2 Company and I am acquainted with all the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That I say that I have read and understood the contents of the accompanying Writ Petition and say that the facts stated therein are true and correct to my information as derived from the record of the case.
3. That I say that the annexures annexed to the Writ Petition are true copies of their respective originals.

For AISHWARYA DESIGN STUDIO PVT. LTD.

M. K. Shah

DEPONENT Director

Verification:

I, the above named deponent do hereby verify at New Delhi on this 18th day of May 2015 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

For AISHWARYA DESIGN STUDIO PVT. LTD.

M. K. Shah

DEPONENT Director

ANNEXURE- P-1

Department of Industrial Policy and Promotion

Ministry of Commerce and Industry

Government of India

Consolidated FDI Policy

(Effective from May 12, 2015)

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion

Consolidated FDI Policy Circular of 2015

Subject: Consolidated FDI Policy

The "Consolidated FDI Policy" is attached.

2. This Circular will take effect from May 12, 2015.

(Atul Chaturvedi)
Joint Secretary to the Government of India

D/o IPP F. No. 5(1)/2015-FC-1 Dated the 12th May, 2015

Copy forwarded to:

1. Press Information Officer, Press Information Bureau- for giving wide publicity to the above circular.
2. NIC, DIPP for uploading the circular on DIPP's website.
3. Department of Economic Affairs, Ministry of Finance, New Delhi.
4. Reserve Bank of India, Mumbai.
5. Hindi Section for Hindi Translation.

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Chapter 1: Intent and Objective

1.1 Intent and Objective

1.1.1 It is the intent and objective of the Government of India to attract and promote foreign direct investment in order to supplement domestic capital, technology and skills, for accelerated economic growth. Foreign Direct Investment, as distinguished from portfolio investment, has the connotation of establishing a 'lasting interest' in an enterprise that is resident in an economy other than that of the investor.

1.1.2 The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 (notification No.FEMA 20/2000-RB dated May 3, 2000). These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. The procedural instructions are issued by the Reserve Bank of India vide A.P. (DIR Series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

1.1.3 The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on May 11, 2015 and reflects the FDI Policy as on May 12, 2015. However, Press Note 4 of 2015, dated April 24, 2015, regarding policy on foreign investment in pension sector, will remain effective. This Circular accordingly will take effect from May 12, 2015 and will remain in force until superseded in

totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

1.1.4 Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to May 12, 2015, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.

Chapter 2: Definitions

2.1 Definitions

2.1.1 ***'AD Category-I Bank'*** means a bank (Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.

2.1.2 ***'Authorized Bank'*** means a bank including a co-operative bank (other than an authorized dealer) authorized by the Reserve Bank to maintain an account of a person resident outside India.

2.1.3 ***'Authorized Dealer'*** means a person authorized as an authorized dealer under sub-section (1) of section 10 of FEMA.

2.1.4 ***'Authorized Person'*** means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under sub-section (a) of section 10 of FEMA to deal in foreign exchange or foreign securities.

2.1.5 ***'Capital'*** means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.

Note: Warrants and partly paid shares can be issued to person/(s) resident outside India only after approval through the Government route[1].

2.1.6 ***'Capital account transaction'*** means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 of FEMA.

2.1.7 ***'Control'*** shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

2.1.8 ***'Depository Receipt'*** (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which

[1] Review of FDI policy to include warrants and partly-paid shares is under consideration of the Government.

represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs). DRs are governed by Notification No. FEMA 330/ 2014-RB, issued by Reserve bank of India.

2.1.9 ***'Erstwhile Overseas Corporate Body'*** (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

2.1.10 ***'Foreign Currency Convertible Bond'*** (FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

2.1.11 ***'FDI'*** means investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Original notification is available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174 Subsequent amendment notifications are available at http://rbi.org.in/Scripts/BS_FemaNotifications.aspx).

2.1.12 ***'FEMA'*** means the Foreign Exchange Management Act, 1999 (42 of 1999) (http://finmin.nic.in/law/index.asp).

2.1.13 ***'FIPB'*** means the Foreign Investment Promotion Board constituted by the Government of India.

2.1.14 ***'Foreign Institutional Investor'***(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations 1995.

2.1.15 ***'Foreign Portfolio Investor'***(FPI)[2] means a person registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

2.1.16 ***'Foreign Venture Capital Investor'*** (FVCI) means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000 {SEBI(FVCI) Regulations} and proposes to make investment in accordance with these Regulations.

2.1.17 ***'Government route'*** means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).

2.1.18 ***'Group Company'*** means two or more enterprises which, directly or indirectly, are in a position to:

(i) exercise twenty-six percent or more of voting rights in other enterprise; or

(ii) appoint more than fifty percent of members of board of directors in the other enterprise.

2.1.19 ***'Holding Company'*** would have the same meaning as defined in Companies Act, as applicable.

2.1.20 ***'Indian Company'*** means a company incorporated in India under the Companies Act, as applicable.

[2] For details please refer to SEBI (FPI) Regulations, 2014 and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014 notified vide Notification No. FEMA.297/2014-RB dated March 13, 2014 and A.P. (DIR Series) Circular No.112 dated March 25, 2014. Wherever the words or acronyms FPI, FII or QFI occur in this document, the meaning and implications must be according to the above Regulations/Notifications, particularly during the transition period as prescribed in these Regulations.

2.1.21 ***'Indian Venture Capital Undertaking'*** (IVCU) means an Indian company:

(i) whose shares are not listed in a recognised stock exchange in India;

(ii) which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.

2.1.22 ***'Investing Company'*** means an Indian Company holding only investments in other Indian company/(ies), directly or indirectly, other than for trading of such holdings/securities.

2.1.23 ***'Investment on repatriable basis'*** means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India and the expression 'investment on non-repatriable basis' shall be construed accordingly.

2.1.24 ***'Joint Venture'*** (JV) means an Indian entity incorporated in accordance with the laws and regulations in India in whose capital a non-resident entity makes an investment.

2.1.25 ***'Limited Liability Partnership'*** means a Limited Liability Partnership firm, formed and registered under the Limited Liability Partnership Act, 2008.

2.1.26 ***'Non-resident entity'*** means a 'person resident outside India' as defined under FEMA.

2.1.27 ***'Non-Resident Indian'*** (NRI) means an individual resident outside India who is a citizen of India or is a person of Indian origin.

2.1.28 A company is considered as ***'Owned'*** by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens;

2.1.29 ***'Person'*** includes-

(i) an individual,
(ii) a Hindu undivided family,
(iii) a company,
(iv) a firm,
(v) an association of persons or a body of individuals whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office, or branch owned or controlled by such person.

2.1.30 ***'Person of Indian Origin'*** (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

(i) he at any time held Indian Passport; or

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

(iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

2.1.31 ***'Person resident in India'*** means-

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

(A) A person who has gone out of India or who stays outside India, in either case-

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) A person who has come to or stays in India, in either case, otherwise than-

(a) for or on taking up employment in India; or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India.

2.1.32 ***'Person resident outside India'*** means a person who is not a Person resident in India.

2.1.33 ***'Portfolio Investment Scheme'*** means the Portfolio Investment Scheme referred to in Schedules 2, 2A & 3 of FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

2.1.34 ***'A Qualified Foreign Investor'*** (QFI) means a non-resident investor (other than SEBI registered FII and SEBI registered FVCI) who meets the KYC requirements of SEBI for the purpose of making investments in accordance with the regulations/orders/circulars of RBI/SEBI.

2.1.35 ***'RBI'*** means the Reserve Bank of India established under the Reserve Bank of India Act, 1934.

2.1.36 ***'Resident Entity'*** means 'Person resident in India' excluding an individual.

2.1.37 ***'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, 1955.

2.1.38 ***'SEBI'*** means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.

2.1.39 ***'SEZ'*** means a Special Economic Zone as defined in Special Economic Zone Act, 2005.

2.1.40 ***'SIA'*** means Secretariat of Industrial Assistance in DIPP, Ministry of Commerce & Industry, Government of India.

2.1.41 ***'Transferable Development Rights'*** (TDR) means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

2.1.42 ***'Venture Capital Fund'*** (VCF) means a Fund established in the form of a trust, a company including a body corporate and registered under Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996, which

(i) has a dedicated pool of capital;
(ii) raised in the manner specified under the Regulations; and
(iii) invests in accordance with the Regulations.

Chapter 3: General Conditions on FDI

3.1 Who Can Invest in India?

3.1.1 A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy and sectors/activities prohibited for foreign investment.

3.1.2 NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

3.1.3 OCBs have been derecognized as a class of investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route.

3.1.4 (i) An FII/FPI may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI/QFI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI/QFI investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.

(ii) An Indian company which has issued shares to FIIs/FPIs under the FDI Policy for which the payment has been received directly into company's

account should report these figures separately under item no. 5 of Form FC-GPR **(Annex-1)**.

(iii) A daily statement in respect of all transactions (except derivative trade) has to be submitted by the custodian bank in floppy/soft copy in the prescribed format directly to RBI and also uploaded directly on the OFRS web site (https://secweb.rbi.org.in/ORFSMainWeb/Login.jsp).

3.1.5 Only registered FIIs/FPIs and NRIs as per Schedules 2, 2A and 3 respectively of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges.

3.1.6 A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian Venture Capital Undertaking (IVCU) and may also set up a domestic asset management company to manage the fund. All such investments can be made under the automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations.

Further, FVCIs are allowed to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes/funds set up by a VCF) by way of private arrangement/purchase from a third party also, subject to terms and conditions as stipulated in Schedule 6 of Notification No. FEMA 20 / 2000 - RB dated May 3, 2000 as amended from time to time. It is also being clarified that SEBI registered FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time, as well as the terms and conditions stipulated therein.

3.1.7 **Qualified Foreign Investors (QFIs) investment in equity shares**

3.1.7.1 QFIs are permitted to invest through SEBI registered Depository Participants (DPs) only in equity shares of listed Indian companies through recognized brokers on recognized stock exchanges in India as well as in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations. QFIs are also permitted to acquire equity shares by way of right shares, bonus shares or equity shares on account of stock split/consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the prescribed investment limits. QFIs are allowed to sell the equity shares so acquired subject to the relevant SEBI guidelines.

3.1.7.2 The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be within FPI aggregate limits. Further, wherever there are composite sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps.

3.1.7.3 Dividend payments on equity shares held by QFIs can either be directly remitted to the designated overseas bank accounts of the QFIs or credited to the single non-interest bearing Rupee account.

3.2 Entities into which FDI can be made

3.2.1 **FDI in an Indian Company**

Indian companies can issue capital against FDI.

3.2.2 **FDI in Partnership Firm/Proprietary Concern**

(i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;

(a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.

(b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.

(c) Amount invested shall not be eligible for repatriation outside India.

(ii) Investments with repatriation option: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

(iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

(iv) Restrictions: An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or print media.

3.2.3 **FDI in Venture Capital Fund (VCF)**

FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs)/Venture Capital Funds (VCFs)/other companies, as stated in paragraph 3.1.6 of this Circular. If a domestic VCF is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF subject to approval of the FIPB. However, if a domestic VCF is set-up as an incorporated company under the Companies Act, as applicable, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms. etc.

3.2.4 **FDI in Trusts**

FDI in Trusts other than VCF is not permitted.

3.2.5 **FDI in Limited Liability Partnerships (LLPs)**

FDI in LLPs is permitted, subject to the following conditions:

(a) FDI will be allowed, through the Government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).

(b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

(c) An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

(d) LLPs with FDI will not be eligible to make any downstream investments.

(e) Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.

(f) Investment in LLPs by Foreign Portfolio Investors (FPIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).

(g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, as applicable and not any other body, such as an LLP or a trust.

(h) For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

(i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except clause 3.2.5(e) which would be optional in case of a company) are met and with the prior approval of FIPB/Government.

3.2.6 **FDI in other Entities**

FDI in resident entities other than those mentioned above is not permitted.

3.3 Types of Instruments

3.3.1 Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations. The price/conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. 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 instruments, in accordance with the extant FEMA regulations [as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies].

3.3.1.1 Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares under FDI scheme, subject to the following conditions:

(a) There is a minimum lock-in period of one year which shall be effective from the date of allotment of such capital instruments.

(b) After the lock-in period and subject to FDI Policy provisions, if any, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.

3.3.2 Other types of Preference shares/Debentures i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECBs relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of London Interbank Offered Rate (LIBOR) plus the spread as permissible for ECBs of corresponding maturity.

3.3.3 The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.

3.3.4 **Issue of Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts(DRs)**

a) FCCBs/DRs may be issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and DR Scheme 2014 respectively, as per the guidelines issued by the Government of India there under from time to time.

b) DRs are foreign currency denominated instruments issued by a foreign Depository in a permissible jurisdiction against a pool of permissible securities issued or transferred to that foreign depository and deposited with a domestic custodian.

c) In terms of Notification No. FEMA.20/2000-RB dated May 3, 2000 as amended from time to time, a person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014 and guidelines issued by the Government of India thereunder from time to time.

d) A person can issue DRs, if it is eligible to issue eligible instruments to person resident outside India under Schedules 1, 2, 2A, 3, 5 and 8 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

e) The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the relevant regulations framed under FEMA, 1999.

f) The pricing of eligible securities to be issued or transferred to a foreign depository for the purpose of issuing depository receipts should not be at a price less than the price applicable to a corresponding mode of issue or transfer of such securities to domestic investors under the relevant regulations framed under FEMA, 1999.

g) The issue of depository receipts as per DR Scheme 2014 shall be reported to the Reserve Bank by the domestic custodian as per the reporting guidelines for DR Scheme 2014.

3.3.5 (i) **Two-way Fungibility Scheme:** A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs/GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. Re-issuance of ADRs/GDRs would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the Indian market.

(ii) **Sponsored ADR/GDR issue:** An Indian company can also sponsor an issue of ADR/GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/GDRs can be issued abroad. The proceeds of the ADR/GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADRs/GDRs.

3.4 Issue/Transfer of Shares

3.4.1 The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

3.4.2 **Issue price of shares**

Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than -

a. the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company are listed on any recognised stock exchange in India;

b. the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and

c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

3.4.3 **Foreign Currency Account**

Indian companies which are eligible to issue shares to persons resident outside India under the FDI Policy may be allowed to retain the share subscription amount in a Foreign Currency Account, with the prior approval of RBI.

3.4.4 **Transfer of shares and convertible debentures**

(i) Subject to FDI sectoral policy (relating to sectoral caps and entry routes), applicable laws and other conditionalities including security conditions, non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

(a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible

debentures to any person resident outside India (including NRIs). Government approval is not required for transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. In addition, approval of Government will be required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route.

(b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

(c) A person resident outside India can transfer any security to a person resident in India by way of gift.

(d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

(e) A person resident in India can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the guidelines given in para 3.4.5.2 and **Annex-2**.

(f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in para 3.4.5.2 and **Annex-2**.

(g) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company.

(h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India. However, in cases where the NR investor, including an NRI, acquires

shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank.

(ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category-I bank at the time of receipt of funds. In case, the remittance receiving AD Category-I bank is different from the AD Category-I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category-I bank carrying out the transaction along with the Form FC-TRS.

(iii) A person resident outside India including a Non-Resident Indian investor who has already acquired and continues to hold the control in accordance with the SEBI (Substantial Acquisition of Shares and Takeover) Regulations can acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme provided that the original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, mode of payment, reporting requirement, documentation, etc.

(iv) **Escrow**: AD Category-I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers/exit offers and delisting of shares. The relevant SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST) Regulations or any other applicable SEBI Regulations/provisions of the Companies Act, as applicable will be applicable. AD Category-I banks have also been permitted to open and maintain, without prior approval of RBI, **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions specified by RBI. SEBI authorised Depository Participants have also been permitted to open and maintain, without prior approval of RBI, Escrow accounts for securities subject to the terms and conditions as specified by RBI. In both cases, the Escrow agent shall necessarily be an AD Category-I bank or SEBI

authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from/to the non- residents.

3.4.5 **Prior permission of RBI in certain cases for transfer of capital instruments**

3.4.5.1 Except cases mentioned in paragraph 3.4.5.2 below, the following cases require prior approval of RBI:

(i) Transfer of capital instruments from resident to non-residents by way of sale where :

(a) Transfer is at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time and the transaction does not fall under the exception given in para 3.4.5.2.

(b) Transfer of capital instruments by the non-resident acquirer involving deferment of payment of the amount of consideration. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category-I bank for necessary due diligence, within 60 days from the date of receipt of the full and final amount of consideration.

(ii) Transfer of any capital instrument, by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the documents mentioned in **Annex-3** should be enclosed. Reserve Bank considers the following factors while processing such applications:

(a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

(b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.

(c) The applicable sectoral cap limit in the Indian company is not breached.

(d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in **Section 2 (77) of Companies Act,**

2013, as amended from time to time. The current list is reproduced in **Annex-4**.

(e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 during the financial year.

(f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

(iii) Transfer of shares from NRI to non-resident.

3.4.5.2 **In the following cases, approval of RBI is not required**:

A. Transfer of shares from a Non-Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that:

i. The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;

ii. The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST, buy back); and

iii. Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

B. Transfer of shares from Resident to Non-Resident:

i) where the transfer of shares requires the prior approval of the Government conveyed through FIPB as per the extant FDI policy provided that:

a) the requisite approval of the FIPB has been obtained; and

b) the transfer of shares adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

ii) **where the transfer of shares attract SEBI (SAST) Regulations** subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.

iii) **where the transfer of shares does not meet the pricing guidelines under the FEMA, 1999 provided that:**

a) The resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc.;

b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST); and

c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

iv) **where the investee company is in the financial sector provided that:**

a) Any 'fit and proper/due diligence' requirements as regards the non-resident investor as stipulated by the respective financial sector regulator, from time to time, have been complied with; and

b) The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, pricing, etc.), reporting requirements, documentation etc., are complied with.

3.4.6 **Conversion of ECB/Lump sum Fee/Royalty etc. into Equity**

(i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements:

(a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;

(b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;

(c) Pricing of shares is as per the provision of para 3.4.2 above;

(d) Compliance with the requirements prescribed under any other statute and regulation in force; and

(e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.

(ii) General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty due for payment, subject to entry route, sectoral cap and pricing guidelines (as per the provision of para 3.4.2 above) and compliance with applicable tax laws. Further, issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued thereunder is permitted, provided that:

(I) The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time;

Explanation: Issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of FEMA 20 or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines;

(II)The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

(iii) Issue of equity shares under the FDI policy is allowed under the Government route for the following:

(I) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the following conditions:

(a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.

(b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.

(c) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.

(II) pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:

(a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.

(b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.

(c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.

(d) The applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company.

General conditions:

(i) All requests for conversion should be accompanied by a special resolution of the company.

(ii)Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

3.5 Specific Conditions in Certain Cases

3.5.1 **Issue of Rights/Bonus Shares**

FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, as applicable, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The offer on right basis to the persons resident outside India shall be:

(a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

(b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

3.5.2 **Prior permission of RBI for Rights issue to erstwhile OCBs**

OCBs have been de-recognised as a class of investors from September 16, 2003. Therefore companies desiring to issue rights share to such erstwhile OCBs will have to take specific prior permission from RBI. As such, entitlement of rights share is not automatically available to erstwhile OCBs. However bonus shares can be issued to erstwhile OCBs without the approval of RBI.

3.5.3 **Additional allocation of rights share by residents to non-residents**

Existing non-resident shareholders are allowed to apply for issue of additional shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

3.5.4 **Acquisition of shares under Scheme of Merger/Demerger/Amalgamation**

Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

(i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and

(ii)the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

Note: FIPB approval would not be required in case of mergers and acquisitions taking place in sectors under automatic route.

3.5.4.1 **Issue of Non convertible/redeemable bonus preference shares or debentures**

Indian companies are allowed to issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.

3.5.5 **Issue of shares under Employees Stock Option Scheme (ESOPs)**

(i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

(a)The scheme has been drawn in terms of relevant regulations issued by the SEBI, and

(b)The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

(ii)Unlisted companies have to follow the provisions of the Companies Act, as applicable. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route.

(iii) The issuing company is required to report (plain paper reporting) the details of granting of stock options under the scheme to non-resident employees to the Regional Office concerned of the Reserve Bank and thereafter the details of issue of shares subsequent to the exercise of such stock options within 30 days from the date of issue of shares in Form FC-GPR.

3.5.6 **Share Swap**

In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Government conveyed through Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.

3.5.7 **Pledge of Shares**

(A) A person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowings, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer. The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that:

i) the loan agreement has been signed by both the lender and the borrower,

ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and

iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank:

and the said pledge would be subject to the following conditions:

a) the period of such pledge shall be co-terminus with the maturity of the underlying ECB;

b) in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;

c) the Statutory Auditor has certified that the borrowing company will utilized/has utilized the proceeds of the ECB for the permitted end use/s only.

(B) Non-residents holding shares of an Indian company, can pledge these shares in favour of the AD bank in India to secure credit facilities being

extended to the resident investee company for bonafide business purpose, subject to the following conditions:

(i) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;

(ii) submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;

(iii) the Indian company has to follow the relevant SEBI disclosure norms; and

(iv) pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.

(C) Non-residents holding shares of an Indian company, can pledge these shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor/non-resident promoter of the Indian company or its overseas group company, subject to the following:

(i) loan is availed of only from an overseas bank;

(ii) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;

(iii) overseas investment should not result in any capital inflow into India;

(iv) in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and

(v) submission of a declaration/annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

3.6 Entry Routes for Investment

3.6.1 Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by FIPB.

3.6.2 **Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors with caps**

In sectors/activities with caps, including *inter-alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc. or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition etc.

(v) It is clarified that these guidelines will not apply to sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

(vi) It is also clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under

Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

3.7 Caps on Investments

3.7.1 Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. The caps in various sector(s) are detailed in Chapter 6 of this Circular.

3.8 Entry Conditions on Investment

3.8.1 Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in Chapter 6 of this Circular.

3.9 Other Conditions on Investment besides Entry Conditions

3.9.1 Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

3.10 Foreign Investment into/downstream Investment by Indian Companies

3.10.1 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 Paragraph 4.1.

3.10.2 For the purpose of this chapter,

(i) 'Downstream investment' means indirect foreign investment, by one Indian company, into another Indian company, by way of subscription or acquisition, in terms of Paragraph 4.1. Paragraph 4.1.3 provides the guidelines for calculation of indirect foreign investment, with conditions specified in paragraph 4.1.3 (v).

(ii) 'Foreign Investment' would have the same meaning as in Paragraph 4.1.

3.10.3 **Foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies (regardless of its ownership or control)**:

3.10.3.1 Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior

Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in paragraph 6.2.18.8 of this Circular.

3.10.3.2 Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

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

Note: Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

3.10.4 **Downstream investment by an Indian company which is not owned and/or controlled by resident entity/ies**

3.10.4.1 Downstream investment by an Indian company, which is not owned and/or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

Note: 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 owned and/or controlled by non-residents/a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

3.10.4.2 Downstream investments by Indian companies will be subject to the following conditions:

(i) Such a company is to notify SIA, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) 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 as also a shareholders agreement, if any;

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

(iv) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible, subject to the provisions of paragraphs 3.10.3 and 3.10.4.1.

Chapter 4: Calculation of Foreign Investment

4.1 Total Foreign Investment i.e. Direct and Indirect Foreign Investment in Indian Companies

4.1.1 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 also be a cascading investment i.e. through multi-layered structure.

4.1.2 For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments i.e. FDI; investment by FIIs (holding as on March 31); FPIs (holding as on March 31); QFIs (holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

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

(i) **Counting of direct foreign investment**

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

(ii) **Counting of indirect foreign investment**

(a) 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 .

(b) For cases where condition (a) 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, 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. This exception is 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. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

Illustration

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

(A) where Company Y has foreign investment less than 50%- Company X would not be taken as having any indirect foreign investment through Company Y.

(B) where Company Y has foreign investment of say 75% and:

(I) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X;

(II) invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%;

(III) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), 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 X would be computed in the ratio of 75:25 in the total investment of Company Y in Company X.

(iii) The total foreign investment would be the sum total of direct and indirect foreign investment.

(iv) The above methodology of calculation would apply at every stage of investment in Indian companies and thus to each and every Indian company.

(v) **Additional conditions**

(a) 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.

(b) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst shareholders 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 such *inter-se* agreements for determining ownership and control when considering the case for approval of foreign investment.

(c) 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.

(d) In the I& B sector 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.

(A)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 or Section 2 (72) of the Companies Act, 2013, as the case may be. 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,

(aa) The individual shareholder,

(bb) A relative of the shareholder within the meaning of Section 2 (77) of Companies Act, 2013.

(cc) 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,

(aa)The Indian company

(bb)A group of Indian companies under the same management and ownership control.

(B)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 2 (77) of Companies Act, 2013/ HUF, either singly or in combination holding at least 51% of the shares.

(C)Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (I) and (II) of clause 4.1.3(v)(d)(A) 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.

(e) If a declaration is made by persons as per section 187C of the Companies Act,1956 or section 89 of the Companies Act, 2013, as the case may be 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.

4.1.4 The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the Insurance Sector which will continue to be governed by the relevant Regulation.

4.1.5 Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 (date of issue of Press Note 2 of 2009) would not require any modification to conform to these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

Chapter 5: Foreign Investment Promotion Board (FIPB)

5.1 Constitution of FIPB

5.1.1 FIPB comprises of the following Secretaries to the Government of India:

(i) Secretary to Government, Department of Economic Affairs, Ministry of Finance – Chairperson

(ii) Secretary to Government, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry

(iii) Secretary to Government, Department of Commerce, Ministry of Commerce & Industry

(iv) Secretary to Government, Economic Relations, Ministry of External Affairs

(v) Secretary to Government, Ministry of Overseas Indian Affairs.

5.1.2 The Board would be able to co-opt other Secretaries to the Central Government and top officials of financial institutions, banks and professional experts of Industry and Commerce, as and when necessary.

5.2 Levels of Approvals for Cases under Government Route

5.2.1 The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs. 2000 crore.

5.2.2 The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 2000 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).

5.2.3 The CCEA would also consider the proposals which may be referred to it by the FIPB/the Minister of Finance (in-charge of FIPB).

5.3 Cases which do not require Fresh Approval

5.3.1 Companies may not require fresh prior approval of the Government i.e. Minister-in-charge of FIPB/CCEA for bringing in additional foreign investment into the same entity, in the following cases:

(i) Entities the activities of which had earlier required prior approval of FIPB/CCFI/CCEA and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but

subsequently such activities/sectors have been placed under automatic route;

(ii) Entities the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained prior approval of FIPB/CCFI/CCEA for their initial foreign investment but subsequently such caps were removed/increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps; and

(iii) Additional foreign investment into the same entity where prior approval of FIPB/CCFI/CCEA had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18/1998 or Press Note 1 of 2005 and prior approval of the Government under the FDI policy is not required for any other reason/purpose.

(iv) Additional foreign investment into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

5.4 Online Filing of Applications for FIPB/Government's Approval

5.4.1 Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at FIPB's website (http://finmin.nic.in/) and (http://fipb.gov.in).

Chapter 6: Sector Specific Conditions on FDI

6.1 Prohibited Sectors

FDI is prohibited in:

a) Lottery Business including Government/private lottery, online lotteries, etc.

b) Gambling and Betting including casinos etc.

c) Chit funds

d) Nidhi company

e) Trading in Transferable Development Rights (TDRs)

f) Real Estate Business or Construction of Farm Houses

g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

h) Activities/sectors not open to private sector investment e.g. (I) Atomic Energy and (II) Railway operations(other than permitted activities mentioned in para 6.2).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

6.2 Permitted Sectors

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

Agriculture

6.2.1 Agriculture & Animal Husbandry

Sector/Activity	% of Equity/ FDI Cap	Entry Route
a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and Production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and d) Services related to agro and allied sectors **Note: Besides the above, FDI is not allowed in any other agricultural sector/activity**	100%	Automatic

6.2.1.1 Other Conditions

I. For companies dealing with development of transgenic seeds/vegetables, the following conditions apply:

(i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.

(ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.

(iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.

(iv)Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).

(v) Import of materials shall be in accordance with National Seeds Policy.

II. The term “under controlled conditions” covers the following:

(i) 'Cultivation under controlled conditions' for the categories of floriculture, horticulture, cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and

culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically.

(ii) In case of Animal Husbandry, scope of the term 'under controlled conditions' covers –

(a) Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems as prescribed by the National Livestock Policy, 2013 and in conformity with the existing 'Standard Operating Practices and Minimum Standard Protocol.'

(b) Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.

(iii) In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers –

(a) Aquariums

(b) Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.

(iv) In the case of apiculture, scope of the term 'under controlled conditions' covers–

(a) Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.

6.2.2 Tea Plantation

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.2.1 Tea sector including tea plantations **Note:** Besides the above, FDI is not allowed in any other plantation sector/activity.	100%	Government

6.2.2.2 Other Condition

Prior approval of the State Government concerned is required in case of any future land use change.

Mining and Petroleum & Natural Gas
6.2.3 Mining

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.3.1 **Mining and Exploration of metal and non-metal ores** including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; **subject to** the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
6.2.3.2 **Coal & Lignite** (1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and **subject to** the provisions of Coal Mines (Nationalization) Act, 1973. (2) Setting up coal processing plants like washeries **subject to** the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
6.2.3.3 **Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities** **6.2.3.3.1** Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities **subject to** sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957).	100%	Government

6.2.3.3.2 Other Conditions

India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as "prescribed substances" under the Atomic Energy Act, 1962.

Under the Industrial Policy Statement 1991, mining and production of minerals classified as "prescribed substances" and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422, dated 6th October 1998, issued by the Department of Atomic Energy, laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI) was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).

Vide Notification No. S.O.61(E), dated 18.1.2006, the Department of Atomic Energy re-notified the list of "prescribed substances" under the Atomic Energy Act 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds and minerals/concentrates including Zircon, were removed from the list of "prescribed substances".

(i) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.:

(A) value addition facilities are set up within India along with transfer of technology;

(B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

(ii) FDI will not be allowed in mining of "prescribed substances" listed in the Notification No. S.O. 61(E), dated 18.1.2006, issued by the Department of Atomic Energy.

Clarification:

(1)For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product.

(2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.

6.2.4 Petroleum & Natural Gas

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.4.1 Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, **subject to** the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
6.2.4.2 Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic

Manufacturing

6.2.5 Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)

6.2.5.1 FDI in MSEs (as defined under Micro, Small And Medium Enterprises Development Act, 2006 (MSMED, Act 2006)) will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development &

Regulation) Act, 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act, 1951.

6.2.6 Defence

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.6.1 Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	49%	Government route up to 49% Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.
Note: (i) FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. (ii) Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.		

6.2.6.2 Other Conditions

(i) Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.

(ii)The applicant company seeking permission of the Government for FDI up to 49% should be an Indian company owned and controlled by resident Indian citizens.

(iii)The management of the applicant company should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company/partnership firm being resident Indians.

(iv) Chief Security Officer (CSO) of the investee/ joint venture company should be resident Indian citizen.

(v) Full particulars of the Directors and the Chief Executives should be furnished along with the applications.

(vi) The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.

(vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.

(viii) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.

(ix) Investee/joint venture company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.

(x) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.

(xi) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.

(xii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency

under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.

(xiii) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.

(xiv) The Licensee shall be allowed to sell Defence items to Government entities under the control of Ministry of Home Affairs (MHA), State Governments, Public Sector Undertakings (PSUs) and other valid Defence Licensed Companies without prior approval of the Department of Defence Production (DoDP). However, for sale of the items to any other entity, the Licensee shall take prior permission from the Department of Defence Production, Ministry of Defence.

(xv) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.

(xvi) Applications for FDI up to 49% will follow the existing procedure with proposals involving inflows in excess of Rs. 2000 crore being approved by Cabinet Committee on Economic Affairs (CCEA).

(xvii) Based on the recommendation of the Ministry of Defence and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the Ministry of Defence in respect of cases seeking permission of the Government for FDI beyond 49% which are likely to result in access to modern and 'state-of-art' technology in the country.

(xviii) Proposals for FDI beyond 49% with proposed inflow in excess of Rs. 2000 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee on Economic Affairs (CCEA).

(xix) Government decision on applications for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.

(xx) For the proposal seeking Government approval for foreign investment beyond 49%, applicant should be Indian company/foreign investor. Further condition at para (iii) above will not apply on such proposals.

Services Sector

6.2.7 Broadcasting

6.2.7.1 Broadcasting Carriage Services

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.7.1.1 (1)**Teleports**(setting up of up-linking HUBs/Teleports); (2)**Direct to Home** (DTH); (3)**Cable Networks** (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4)**Mobile TV**; (5)**Headend-in-the Sky Broadcasting Service**(HITS)	74%	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.7.1.2 **Cable Networks** (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	49%	Automatic

6.2.7.2 Broadcasting Content Services

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.7.2.1 **Terrestrial Broadcasting FM (FM Radio)**, subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	26%	Government
6.2.7.2.2 **Up-linking of 'News & Current Affairs' TV Channels**	26%	Government
6.2.7.2.3 **Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels**	100%	Government

6.2.7.3 FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.

6.2.7.4 Foreign investment (FI) in companies engaged in all the aforestated services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.

6.2.7.5 The foreign investment (FI) limit in companies engaged in the aforestated activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Qualified Foreign Investors(QFIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.

6.2.7.6 Foreign investment in the aforestated broadcasting carriage services will be subject to the following security conditions/terms:

Mandatory Requirement for Key Executives of the Company

(i) The majority of Directors on the Board of the Company shall be Indian citizens.

(ii) The Chief Executive Officer (CEO), Chief Officer in-charge of technical network operations and Chief Security Officer should be resident Indian citizens.

Security Clearance of Personnel

(iii) The Company, all Directors on the Board of Directors and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), shareholders who individually hold 10% or more paid-up capital in the company and any other category, as may be specified by the Ministry of Information and Broadcasting from time to time, shall require to be security cleared.

In case of the appointment of Directors on the Board of the Company and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), etc., as may be specified by the Ministry of Information and Broadcasting from time to time, prior permission of the Ministry of Information and Broadcasting shall have to be obtained.

It shall be obligatory on the part of the company to also take prior permission from the Ministry of Information and Broadcasting before effecting any change in the Board of Directors.

(iv) The Company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment. The security clearance shall be required to be obtained every two years.

Permission *vis-à-vis* Security Clearance

(v) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn, the permission granted is liable to be terminated forthwith.

(vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel being denied or withdrawn for any reasons whatsoever, the permission holder/licensee will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government, failing which the permission/license granted shall be revoked and the company shall be disqualified to hold any such Permission/license in future for a period of five years.

Infrastructure/Network/Software related requirement

(vii) The officers/officials of the licensee companies dealing with the lawful interception of services will be resident India citizens.

(viii) Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company. Clearance from the licensor would be required if such information is to be provided to anybody else.

(ix) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant law.

(x) The Company must provide traceable identity of their subscribers.

Monitoring, Inspection and Submission of Information

(xi) The Company should ensure that necessary provision (hardware/software) is available in their equipment for doing the lawful interception and monitoring from a centralized location as and when required by Government.

(xii) The company, at its own costs, shall, on demand by the government or its authorized representative, provide the necessary equipment, services and

facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.

(xiii)The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government or its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the company's activities and operations. Continuous monitoring, however, will be confined only to security related aspects, including screening of objectionable content.

(xiv)The inspection will ordinarily be carried out by the Government of India, Ministry of Information & Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection.

(xv)The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time.

(xvi)The permission holder/licensee shall be liable to furnish the Government of India or its authorized representative or TRAI or its authorized representative, such reports, accounts, estimates, returns or such other relevant information and at such periodic intervals or such times as may be required.

(xvii)The service providers should familiarize/train designated officials or the Government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems.

National Security Conditions

(xviii)It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. The Government of India, Ministry of Information and Broadcasting shall have the right to temporarily suspend the permission of the permission holder/Licensee in public interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission in future for a period of five years.

(xix)The company shall not import or utilize any equipment, which are identified as unlawful and/or render network security vulnerable.

Other Conditions

(xx)Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services.

(xxi)Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.

6.2.8 Print Media

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.8.1 Publishing of newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	Government
6.2.8.2 Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	Government

6.2.8.2.1 Other Conditions

(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.

(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008.

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.8.3 Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, **subject to** compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government

6.2.8.4 Publication of facsimile edition of foreign newspapers	100%	Government
6.2.8.4.1 Other Conditions (i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India. (ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, as applicable. (iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.		

6.2.9 Civil Aviation

6.2.9.1 The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.

For the purposes of the Civil Aviation sector:

(i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934;

(ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto;

(iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;

(iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward;

(v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment;

(vi) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis;

(vii) "Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public;

(viii) "Non-Scheduled air transport service" means any service which is not a scheduled air transport service and will include Cargo airlines;

(ix) "Cargo airlines" would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;

(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water;

(xi) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.

6.2.9.2 Airports

Sector/Activity	**% of Equity/ FDI Cap**	**Entry Route**
(a) Greenfield projects	100%	Automatic
(b) Existing projects	100%	Automatic up to 74% Government route beyond 74%

6.2.9.3 Air Transport Services

Sector/Activity	**% of Equity/ FDI Cap**	**Entry Route**
(1)Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
(2)Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%

(3)Helicopter services/seaplane services requiring DGCA approval	100%	Automatic

6.2.9.3.1 Other Conditions

(a) Air Transport Services would 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 also allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:

(i) It would be made under the Government approval route.

(ii) The 49% limit will subsume FDI and FII/FPI investment.

(iii) The investments so made would need to comply with the relevant regulations of 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) A Scheduled Operator's Permit can be granted only to a company:

a) that is registered and has its principal place of business within India;

b) the Chairman and at least two-thirds of the Directors of which are citizens of India; and

c) the substantial ownership and effective control of which is vested in Indian nationals.

(v) 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

(vi) 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.

Note:(i) The FDI limits/entry routes, mentioned at paragraph 6.2.9.3 (1) and 6.2.9.3 (2) above, are applicable in the situation where there is no investment by foreign airlines.

(ii) The dispensation for NRIs regarding FDI up to 100% will also continue in respect of the investment regime specified at para 6.2.9.3.1(c)(ii) above.

(iii) The policy mentioned at para 6.2.9.3.1 (c) above is not applicable to M/s Air India Limited.

6.2.9.4 Other services under Civil Aviation sector

Sector/Activity	% of Equity/ FDI Cap	Entry Route
(1)Ground Handling Services **subject to** sectoral regulations and security clearance	74% (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
(2)Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic

6.2.10 Courier services

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.	100%	Automatic

6.2.11 Construction Development: Townships, Housing, Built-up Infrastructure

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.11.1 Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)	100%	Automatic

6.2.11.2

Investment will be subject to the following conditions:

(A) Minimum area to be developed under each project would be as under:

(i) In case of development of serviced plots, no minimum land area requirement.

(ii) In case of construction-development projects, a minimum floor area of 20,000 sq. meter.

(B) Investee company will be required to bring minimum FDI of US$ 5 million within six months of commencement of the project. The commencement of the project will be the date of approval of the building plan/lay out plan by the relevant statutory authority. Subsequent tranches of FDI can be brought till the period of ten years from the commencement of the project or before the completion of project, whichever expires earlier.

(C) (i) The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.

(ii)The Government may, in view of facts and circumstances of a case, permit repatriation of FDI or transfer of stake by one non-resident investor to another non-resident investor, before the completion of project. These proposals will be considered by FIPB on case to case basis inter-alia with specific reference to Note (i).

(D) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.

(E) The Indian investee company will be permitted to sell only developed plots. For the purposes of this policy "developed plots" will mean plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.

(F) The Indian investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.

(G) The State Government/Municipal/Local Body concerned, which approves the building/development plans, will monitor compliance of the above conditions by the developer.

Note:

(i) It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).

"Real estate business" will have the same meaning as provided in FEMA Notification No. 1/2000-RB dated May 03, 2000 read with RBI Master Circular i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

(ii) The conditions at (A) to (C) above, will not apply to Hotels &Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.

(iii) The conditions at (A) and (B) above, will also not apply to investee/joint venture companies which commit at least 30 percent of the total project cost for low cost affordable housing.

(iv) An Indian company, which is the recipient of FDI, shall procure a certificate from an architect empanelled by any Authority, authorized to sanction building plan to the effect that the minimum floor area requirement has been fulfilled.

(v) 'Floor area' will be defined as per the local laws/regulations of the respective State governments/Union territories.

(vi) Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.

(vii) Project using at least 40% of the FAR/FSI for dwelling unit of floor area of not more than 140 square meter will be considered as Affordable Housing Project for the purpose of FDI policy in Construction Development Sector. Out of the total FAR/FSI reserved for Affordable Housing, at least one-fourth should be for houses of floor area of not more than 60 square meter.

(viii) It is clarified that 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.

6.2.12 Industrial Parks

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Industrial Parks - new and existing	100%	Automatic

6.2.12.1

(i)"Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.

(ii) "Infrastructure" refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), railway line/sidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.

(iii) "Common Facilities" refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), railway line/sidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.

(iv) "Allocable area" in the Industrial Park means-

(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.

(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.

(c) in the case of a combination of developed land and built-up space- the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.

(v)"Industrial Activity" means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied R&D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business

and management consultancy activities; and architectural, engineering and other technical activities.

6.2.12.2

FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 6.2.11 above, provided the Industrial Parks meet with the under-mentioned conditions:

(i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;

(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

6.2.13 Satellites- establishment and operation

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.13.1 Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government

6.2.14 Private Security Agencies

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Private Security Agencies	49%	Government

6.2.15 Telecom Services

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Telecom Services (including Telecom Infrastructure Providers Category-I) All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services	100%	Automatic up to 49% Government route beyond 49%

(PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.		

6.2.15.1 Other Condition

FDI up to 100% with 49% on the automatic route and beyond 49% on the government route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except "Other Service Providers", which are allowed 100% FDI on the automatic route.

6.2.16 Trading

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.16.1 **Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)**	100%	Automatic

6.2.16.1.1 Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, imply sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.

6.2.16.1.2 Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT):

(a) For undertaking WT, requisite licenses/registration/ permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government

Body/Government Authority/Local Self-Government Body under that State Government should be obtained.

(b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:

(I) Entities holding sales tax/ VAT registration/service tax/excise duty registration; or

(II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/ registration certificate/ membership certificate, as the case may be, is itself/ himself/herself engaged in a business involving commercial activity; or

(III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or

(IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption.

Note: An entity, to whom WT is made, may fulfill any one of the 4 conditions.

(c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis.

(d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture

(e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.

(f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.

6.2.16.2 E-commerce activities

Sector/Activity	% of Equity/ FDI Cap	Entry Route
E-commerce activities	100%	Automatic

6.2.16.2.1 E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.

6.2.16.3 Single Brand product retail trading

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Single Brand product retail trading	100%	Automatic up to 49% Government route beyond 49%

(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

(2) FDI in Single Brand product retail trading would be subject to the following conditions:

(a) Products to be sold should be of a 'Single Brand' only.

(b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.

(c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.

(d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian

entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval.

(e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail trading.

(f) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading.

(3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.

(4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

6.2.16.4 Multi Brand Retail Trading

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Multi Brand Retail Trading	51%	Government

(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:

(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.

(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.

(iii) At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure. Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

(iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer, and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US $ 2.00 million during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the

year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

(v) Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.

(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

(vii) Government will have the first right to procurement of agricultural products.

(viii) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the list at (2) below accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc.

(ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

(x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.

(2) List of States/Union Territories as mentioned in Paragraph 6.2.16.4(1)(viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Himachal Pradesh
6. Jammu & Kashmir
7. Karnataka
8. Maharashtra
9. Manipur
10. Rajasthan
11. Uttarakhand
12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

6.2.17 Railway Infrastructure

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Railway Infrastructure Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems.	100%	Automatic

Note:

(i) Foreign Direct Investment in the abovementioned activities open to private sector participation including FDI is subject to sectoral guidelines of Ministry of Railways.

(ii) Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.

Financial Services

6.2.18 Foreign investment in other financial services, other than those indicated below, would require prior approval of the Government.

6.2.18.1 Asset Reconstruction Companies

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.1.1 'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).	100% of paid-up capital of ARC (FDI+FII/FPI)	Automatic up to 49% Government route beyond 49%

6.2.18.1.2 Other Conditions

(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank, up to 49% on the automatic route, and beyond 49% on the Government route.

(ii) No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII/FPI controlled by the single sponsor.

(iii) The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.

(iv) FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs/FPIs can invest up to 74 per cent of each tranche of scheme of SRs. Such investment should be within the FII/FPI limit on corporate bonds prescribed from time to time, and sectoral caps under extant FDI Regulations should also be complied with.

(v) All investments would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6.2.18.2 Banking- Private Sector

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.2.1 Banking- Private Sector	74% including investment by FIIs/FPIs	Automatic up to 49% Government route beyond 49% and up to 74%.

6.2.18.2.2 Other Conditions

(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs/FPIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.

(2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

(3) The stipulations as above will be applicable to all investments in existing private sector banks also.

(4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs/FPIs and NRIs will be as follows:

(i) In the case of FIIs/FPIs, as hitherto, individual FII/FPI holding is restricted to below 10 per cent of the total paid-up capital, aggregate limit for all FIIs/FPIs/QFIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.

(a) Thus, the FII/FPI/QFI investment limit will continue to be within 49 per cent of the total paid-up capital.

(b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.

(c) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority of India (IRDAI) in order to ensure that the 49 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.

(d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para 3.6.2 above as applicable.

(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDAI on these matters will continue to apply.

(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to non-resident investors as well.

(ii) Setting up of a subsidiary by foreign banks

(a) Foreign banks will be permitted to either have branches or subsidiaries but not both.

(b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.

(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.

(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.

(e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.

(f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI.

(g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.

(iii) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.

6.2.18.3 Banking- Public Sector

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.3.1 Banking- Public Sector **subject to** Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20% (FDI and Portfolio Investment)	Government

6.2.18.4 Commodity Exchanges

6.2.18.4.1

(1) Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.

(2) For the purposes of this chapter,

(i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.

(ii) "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952

(iii) "Association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.

(iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract.

(v) "Commodity derivative" means-

- a contract for delivery of goods, which is not a ready delivery contract; or
- a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.4.2 **Commodity Exchange**	49% (FDI + FII/FPI) [Investment by Registered FII/FPI under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Automatic

6.2.18.4.3 Other Conditions

(1) FII/FPI purchases shall be restricted to secondary market only.

(2) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies.

(3) Foreign investment in commodity exchanges will be subject to the guidelines of the Central Government/Forward Markets Commission (FMC) from time to time.

6.2.18.5 Credit Information Companies (CIC)

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.5.1 Credit Information Companies	74% (FDI+FII/ FPI)	Automatic

6.2.18.5.2 Other Conditions

(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.

(2) Foreign investment is permitted subject to regulatory clearance from RBI.

(3) Investment by a registered FII/FPI under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 74% for foreign investment.

(4) Such FII/FPI investment would be permitted subject to the conditions that:

(a) A single entity should directly or indirectly hold below 10% equity.

(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and

(c) FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.

6.2.18.6 Infrastructure Company in the Securities Market

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.6.1 Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI + FII/FPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital]	Automatic

6.2.18.6.2 Other Condition
FII/FPI can invest only through purchases in the secondary market.

6.2.18.7 Insurance

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.7.1 (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v)Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)	49% {FDI+FPI(FII,QFI)+NRI +FVCI+DR}	Automatic up to 26% Government route beyond 26% and up to 49%

6.2.18.7.2 Other Conditions

(a) No Indian insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine percent of the paid up equity capital of such Indian insurance company.

(b) Foreign direct investment proposals which take the total foreign investment in the Indian insurance company above 26 percent and up to the cap of 49 percent shall be under Government route.

(c) Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.

(d) An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities referred to in Notification No. G.S.R 115 (E), dated 19th February, 2015.

(e) Foreign portfolio investment in an Indian insurance company shall be governed by the provisions contained in sub-regulations (2), (2A), (3) and (8) of regulation 5 of FEMA Regulations, 2000 and provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations.

(f) Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA.

(g) The foreign equity investment cap of 49 percent shall apply on the same terms as above to Insurance Brokers, Third Party Administrators, Surveyors and Loss Assessors and Other Insurance Intermediaries appointed under the provisions of the Insurance Regulatory and Development Authority Act,1999 (41 of 1999):

(h) Provided that where an entity like a bank, whose primary business is outside the insurance area, is allowed by the Insurance Regulatory and Development Authority of India to function as an insurance intermediary, the foreign equity investment caps applicable in that sector shall continue to apply, subject to the condition that the revenues of such entities from their primary (i.e. non-insurance related) business must remain above 50 percent of their total revenues in any financial year.

(i) The provisions of paragraphs 6.2.18.2.2(4) (i) (c) & (e), relating to 'Banking-Private Sector', shall be applicable in respect of bank promoted insurance companies.

(j) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015.

6.2.18.8 Non-Banking Finance Companies (NBFC)

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.18.8.1 Foreign investment in NBFC is allowed under the automatic route in only the following activities: (i)Merchant Banking (ii) Under Writing (iii) Portfolio Management Services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodian Services (x) Factoring (xi) Credit Rating Agencies (xii) Leasing & Finance (xiii) Housing Finance (xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit	100%	Automatic

6.2.18.8.2 Other Conditions

(1) Investment would be subject to the following minimum capitalisation norms:

(i) US $ 0.5 million for foreign capital up to 51% to be brought upfront.

(ii) US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront.

(iii) US $ 50 million for foreign capital more than 75% out of which US $ 7.5 million to be brought upfront and the balance in 24 months.

(iv) NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US $ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. **The minimum capitalization condition as mandated by para 3.10.4.1, therefore, shall not apply to downstream subsidiaries.**

(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.

(vi) Non- Fund based activities: US $0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:

It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

Note: The following activities would be classified as Non-Fund Based activities:

(a) Investment Advisory Services
(b) Financial Consultancy
(c) Forex Broking
(d) Money Changing Business
(e) Credit Rating Agencies

(vii) This will be subject to compliance with the guidelines of RBI.

Note: (i) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.

(ii) Leasing & Finance covers only financial leases and not operating leases. FDI in operating leases is permitted up to 100% on the automatic route.

(2)The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.

Others

6.2.19 Pharmaceuticals

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.19.1 Greenfield	100%	Automatic
6.2.19.2 Brownfield	100%	Government

6.2.19.3 Other Conditions

(i) 'Non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.

(ii) The prospective investor and the prospective investee are required to provide a certificate along with the FIPB application as per **Annex-10**.

(iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.

Note:

i. FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. The abovementioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.

ii. Medical device means-

a. any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software, intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of-

(aa) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;

(ab) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;

(ac) investigation, replacement or modification or support of the anatomy or of a physiological process;

(ad) supporting or sustaining life;

(ae) disinfection of medical devices;

(af) control of conception,

and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

b. an accessory to such an instrument, apparatus, appliance, material or other article;

c. a device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of in vitro examination of specimens derived from the human body or animals.

iii. The definition of medical device at Note (ii) above would be subject to the amendment in Drugs and Cosmetics Act.

6.2.20 Power Exchanges

Sector/Activity	% of Equity/ FDI Cap	Entry Route
6.2.20.1 Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49% (FDI+FII/FPI)	Automatic

6.2.20.2 Other Conditions

(i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII/FPI limit of 23 per cent of the paid-up capital;

(ii) FII/FPI purchases shall be restricted to secondary market only;

(iii)No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and

(iv)The foreign investment would be in compliance with SEBI Regulations; other applicable laws/regulations; security and other conditionalities.

Chapter 7: Remittance, Reporting and Violation

7.1 Remittance and Repatriation

7.1.1 **Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies**:

(i) Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations, 2000 under FEMA.

(ii) AD Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department has been produced.

(iii) **Remittance on winding up/liquidation of Companies**

AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, , as applicable. AD Category-I banks shall allow the remittance provided the applicant submits:

a. No objection or Tax clearance certificate from Income Tax Department for the remittance.

b. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

c. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.

d. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

7.1.2 **Repatriation of Dividend**

Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

7.1.3 **Repatriation of Interest**

Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

7.2 Reporting of FDI

7.2.1 **Reporting of Inflow**

(i) An Indian company receiving investment from outside India for issuing shares/convertible debentures/preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form enclosed as **Annex-5**.

(ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category-I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report (enclosed as **Annex-6**) on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

Explanation: An Indian company issuing partly paid equity shares, shall furnish a report not later than 30 days from the date of receipt of each call payment.

7.2.2 **Reporting of issue of shares**

(i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, enclosed in **Annex-1**, not later than 30 days from the date of issue of shares.

(ii) Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:

(a) A certificate from the Company Secretary of the company certifying that:

(A) all the requirements of the Companies Act, as applicable, have been complied with;

(B) terms and conditions of the Government's approval, if any, have been complied with;

(C) the company is eligible to issue shares under these Regulations; and

(D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

Note: For companies with paid up capital with less than Rs.5 crore, the above mentioned certificate can be given by a practicing company secretary.

(b) A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

(c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Note: An Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.

(d) Annual return on Foreign Liabilities and Assets **(Annex 7)** should be filed on an annual basis by the Indian company, directly with

the Reserve Bank. This is an annual return to be submitted by 15th of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years (i.e. the information submitted by 15th July will pertain to all the investments made in the previous years up to March 31). The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct/portfolio investment may be separately indicated.

(e) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation/merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB/royalty/lumpsum technical know-how fee/import of capital goods by units in SEZs, has to be reported in Form FC-GPR.

7.2.3 **Reporting of transfer of shares**

Reporting of transfer of shares between residents and non-residents and vice- versa is to be done in Form FC-TRS (**Annex 8**). The Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India. However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

7.2.4 **Reporting of Non-Cash**

Details of issue of shares against conversion of ECB have to be reported to the Regional Office concerned of the RBI, as indicated below:

(i) In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the

Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai- 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.

(ii) In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

7.2.5 **Reporting of FCCB/DR Issues**

The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' as given in **Annex-9** within 30 days of close of the issue/ program.

7.3 **Adherence to Guidelines/Orders and Consequences of Violation**

FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the FEMA and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. The Directorate takes up investigation in any contravention of FEMA.

7.3.1 **Penalties**

(i) If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/FIPB/Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one,

further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

(ii) Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means any body corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

(iii) Any Adjudicating Authority adjudging any contraventions under 7.3.1(i), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

7.3.2 **Adjudication and Appeals**

(i) For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

(ii) The Central Government may appoint as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, an Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.

7.3.3 **Compounding Proceedings**

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act

made by the person. No contravention shall be compounded unless the amount involved in such contravention is quantifiable. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously and not later than 180 days from the date of application made to the Compounding Authority. Compounding Authority shall issue order specifying the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contraventions.

Annexures

Annex-1

Form FC-GPR

(To be filed by the company through its Authorised Dealer Category – I bank with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company making the declaration is situated as and when shares/convertible debentures / others are issued to the foreign investor, along with the documents mentioned in item No. 5 of the undertaking enclosed to this form. All fields are mandatory) .

Permanent Account Number (PAN) of the investee company given by the Income Tax Department	
Date of issue of shares / convertible debentures/others	

No.	Particulars	(In Block Letters)
1.	Name of the Investee Company	
	Address of the Registered Office of the Investee Company with City, District and State clearly mentioned Telephone Fax e-mail	
	State	
	Registration No. given by Registrar of Companies and Date of Incorporation.	

	Whether existing company or new company (strike off whichever is not applicable)	Existing company / New company (Brownfield) (Greenfield)
	If existing company, give registration number allotted by RBI for FDI, if any	

2.	Description of the main business activity NIC Code	
	Location of the project and NIC code for the district where the project is located	

	a) Detailed address including Name, City, District and State b) Code for District c) Code for State	
	Percentage of FDI allowed as per FDI policy (Sectoral cap under FDI Policy)	
	State whether FDI is allowed under Automatic Route or Approval Route (strike out whichever is not applicable) (If under approval route, give SIA/FIPB approval No. with date)	Automatic Route / Approval Route

3	**Details of the foreign investor / collaborator[3*] (Details of foreign residence to be given. Indian address if any should not be given)**	
	Name Address Country Constitution / Nature of the investing Entity [Specify whether 1. Individual 2. Company (Please specify if erstwhile OCB) 3. FII 4. FVCI[#] 5. Foreign Trust 6. Private Equity Fund 7. Pension / Provident Fund 8. Sovereign Wealth Fund (SWF)[4] 9. Partnership / Proprietorship Firm 10. Financial Institution 11. NRIs / PIO 12. Others (please specify)] Date of incorporation:	

[*] If there is more than one foreign investor/collaborator, separate Annex may be included for items 3 and 4 of the Form.

2 SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

[#] The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

4	**Particulars of Shares / Convertible Debentures /others Issued**
(a)	**Nature and date of issue**

	Nature of issue	*Date of issue*	*Number of shares/ convertible debentures/others*
01	IPO / FPO		
02	Preferential allotment / private placement		
03	Rights		
04	Bonus		
05	Conversion of ECB		
06	Conversion of royalty (including lump sum payments)		
07	Conversion against import of capital goods by units in SEZ		
08	ESOPs		
09	Share Swap		
10	Others (please specify)		
	Total		

(b) **Type of security issued**

No.	**Nature of security**	*Number*	*Maturity*	*Face value*	Premium	*Issue Price per security*	*Amount of inflow**
01	Equity						
02	Compulsorily Convertible Debentures						
03	Compulsorily Convertible Preference shares						
04	Others (please specify)						
	Total						

i) In case the issue price is greater than the face value please give break up of the premium received.
ii) * In case the issue is against conversion of ECB or royalty or against import of capital goods by units in SEZ, a Chartered Accountant's Certificate certifying the amount outstanding on the date of conversion

(c)	**Break up of premium**	**Amount**
	Control Premium	
	Non competition fee	
	Others@	
	Total	

@ *Please specify the nature*

(d)	**Total inflow** (in Rupees) on account of issue of shares / convertible	

	debentures/others to non-residents (including premium, if any) vide (i) Remittance through AD: (ii) Debit to NRE/FCNR/Escrow A/c with Bank_________ (iii) Others (please specify) Date of reporting of (i) and (ii) above to RBI under Para 9 (1) A of Schedule I to Notification No. FEMA 20 /2000-RB dated May 3, 2000, as amended from time to time.	

(e)	**Disclosure of fair value of shares issued****	
	We are a listed company and the market value of a share as on date of the issue is*	
	We are an un-listed company and the fair value of a share is*	

*** before issue of shares* **(Please indicate as applicable)*

5. **Post issue pattern of shareholding**								
			Equity			*Compulsorily convertible Preference Shares/ Debentures/others*		
Investor category			No. of shares	Amount (Face Value) Rs.	%	No. of shares	Amount (Face Value) Rs.	%
a)	Non-Resident							
	01	Individuals						
	02	Companies						
	03	FIIs						
	04	FVCIs[#]						
	05	Foreign Trusts						
	06	Private Equity Funds						
	07	Pension/ Provident Funds						
	08	Sovereign Wealth Funds						
	09	Partnership/ Proprietorship Firms						
	10	Financial Institutions						
	11	NRIs/PIO						
	12	Others (please specify)						
		Sub Total						
b)	Resident							
Total								

[#] The investment/s is/are made by FVCI under FDI Scheme in terms of Schedule I to Notification No. FEMA 20/2000-RB dated May 3, 2000.

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY: *(Delete whichever is not applicable and authenticate)*

We hereby declare that:

1. We comply with the procedure for issue of shares / convertible debentures as laid down under the FDI scheme as indicated in Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

2. The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfil all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).

a) Shares issued on rights basis to non-residents are in conformity with Regulation 6 of the RBI Notification No FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

OR

b) Shares issued are bonus.

OR

c) Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of de-merger or otherwise of an Indian company, duly approved by a court in India.

OR

d)Shares are issued under ESOP and the conditions regarding this issue have been satisfied

3. Shares have been issued in terms of SIA /FIPB approval No.______________________ dated ______________________

4 The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations

5. We enclose the following documents in compliance with Paragraph 9 (1) (B) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000:

(i) A certificate from our Company Secretary certifying that
- (a) all the requirements of the Companies Act, 1956 have been complied with;
- (b) terms and conditions of the Government approval, if any, have been complied with;
- (c) the company is eligible to issue shares under these Regulations; and
- (d) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

6. Unique Identification Numbers given for all the remittances received as consideration for issue of shares/ convertible debentures/others (details as above), by Reserve Bank.

R														

R														

(Signature of the Applicant)* :_______________

(Name in Block Letters) :_______________

(Designation of the signatory) :_______________

Place:

Date:

(* To be signed by Managing Director/Director/Secretary of the Company)

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY [5] OF THE INDIAN COMPANY ACCEPTING THE INVESTMENT:

(As per Para 9 (1) (B) (i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000)

In respect of the abovementioned details, we certify the following :

1. All the requirements of the Companies Act, 1956 have been complied with.
2. Terms and conditions of the Government approval, if any, have been complied with.
3. The company is eligible to issue shares / convertible debentures/others under these Regulations.
4. The company has all original certificates issued by AD Category – I banks in India, evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000.

(Name & Signature of the Company Secretary) (Seal)

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FC-GPR:	
Unique Identification Number allotted to the Company at the time of reporting receipt of remittance	

[5] If the company doesn't have full time Company Secretary, a certificate from practicing Company Secretary may be submitted

Annex - 2

Terms and conditions for Transfer of Shares/Convertible Debentures, by way of Sale, from a Person Resident in India to a Person Resident Outside India and from a Person Resident Outside India to a Person Resident in India

1.1In order to address the concerns relating to pricing, documentation, payment/ receipt and remittance in respect of the shares/convertible debentures of an Indian company, in all sectors, transferred by way of sale, the parties involved in the transaction shall comply with the guidelines set out below.

1.2**Parties involved in the transaction are** (a) seller (resident/non-resident), (b) buyer (resident/non-resident), (c) duly authorized agent/s of the seller and/or buyer, (d) Authorised Dealer bank (AD) branch and (e) Indian company, for recording the transfer of ownership in its books.

2. Pricing Guidelines

2.1 The under noted pricing guidelines are applicable to the following types of transactions:

i. Transfer of shares by way of sale under private arrangement by a person resident in India to a person resident outside India.

ii. Transfer of shares by way of sale under private arrangement by a person resident outside India to a person resident in India.

iii. Exit by non-resident investor on exercising option/right in shares or compulsorily & mandatorily convertible preference shares or fully, compulsorily & mandatorily convertible debentures.

2.2 **Transfer by Resident to Non-resident** (i.e. to foreign national, NRI, FII, FPI and incorporated non-resident entity other than erstwhile OCB) Price of shares transferred by way of sale by resident to a non-resident where the shares of an Indian company are:

(a) listed on a recognized stock exchange in India ,shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines , as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares,

(b) not listed on a recognized stock exchange in India, shall not be less than the fair value to be determined by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis. The price per share arrived at should be certified by a SEBI registered Merchant Banker or a Chartered Accountant.

2.3Transfer by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII, FPI) **to Resident**

Sale of shares by a non-resident to resident shall be in accordance with Regulation 10 B (2) of Notification No. FEMA 20/2000-RB dated May 3, 2000 which shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given at para 2.2 above.

2.4 After the lock-in period, as applicable above, and subject to FDI Policy provisions, if any, in this regard, the non-resident investor exercising option/right in shares or convertible debentures issued under FDI Scheme shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.

3. Responsibilities / Obligations of the parties

All the parties involved in the transaction would have the responsibility to ensure that the relevant regulations under FEMA are complied with and consequent on transfer of shares, the relevant individual limit/sectoral caps/foreign equity participation ceilings as fixed by Government are not breached. Settlement of transactions will be subject to payment of applicable taxes, if any.

4. Method of payment and remittance/credit of sale proceeds

4.1The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a FII,FPI, payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO accounts.

4.2. The sale proceeds of shares (net of taxes) sold by a person resident outside India may be remitted outside India. In case of FII/FPI, the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE /FCNR(B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes.

4.3The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to

payment of taxes, except in the case of OCBs whose accounts have been blocked by Reserve Bank.

5. Documentation

Besides obtaining a declaration in the enclosed Form FC-TRS (in quadruplicate), the AD branch should arrange to obtain and keep on record the following documents:

5.1 For sale of shares by a person resident in India

i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.

ii. Where Consent Letter has been signed by their duly appointed agent. the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.

iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs,FPIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.

iv. Certificate indicating fair value of shares from a Chartered Accountant.

v. Copy of Broker's note if sale is made on Stock Exchange

vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.

vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached, till it gets registered as FPI.

5.2. For sale of shares by a person resident outside India

i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.

ii. Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.

iii. If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable.

iv. Certificate indicating fair value of shares from a Chartered Accountant.

v. No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Account.

vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

6. Reporting requirements

6.1 Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC-TRS. The Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Forms and submit a monthly report to the Reserve Bank[6].

For the purpose the Authorized Dealers may designate branches to specifically handle such transactions. These branches could be staffed with adequately trained staff for this purpose to ensure that the transactions are put through smoothly. The ADs may also designate a nodal office to coordinate the work at these branches and also ensure the reporting of these transactions to the Reserve Bank.

6.2 When the transfer is on private arrangement basis, on settlement of the transactions, the transferee/his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the Form FC-TRS from the AD branch that the remittances have been received by the transferor/payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.

6.3 The actual inflows and outflows on account of such transfer of shares shall be reported by the AD branch in the R-returns in the normal course.

6.4 In addition the AD branch should submit two copies of the Form FC-TRS received from their constituents/customers together with the statement of inflows/outflows on account of remittances received/made in connection with transfer of shares, by way of sale, to IBD/FED/or the nodal office designated for the purpose by the bank in the enclosed proforma (which is to be prepared in MS-Excel format). The IBD/FED or the nodal office of the bank will in turn submit a consolidated monthly statement in respect of all the transactions reported by their branches together with copies of the FC-TRS Forms received from their branches to Foreign Exchange Department, Reserve Bank, Foreign Investment Division, Central Office, Mumbai in soft copy (in MS- Excel) by e-mail to fdidata@rbi.org.in

[6] To the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai

6.5 Shares purchased / sold by FIIs/FPIs under private arrangement will be by debit /credit to their Special Non-Resident Rupee Account. Therefore, the transaction should **also** be reported in Form LEC by the designated bank of the FII/FPI concerned.

6.6 Shares/convertible debentures of Indian companies purchased under Portfolio Investment Scheme by NRIs, OCBs cannot be transferred, by way of sale under private arrangement.

6.7 On receipt of statements from the AD, the Reserve Bank may call for such additional details or give such directions as required from the transferor/transferee or their agents, if need be.

Annex- 3

Documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift

i. Name and address of the transferor (donor) and the transferee (donee).

ii. Relationship between the transferor and the transferee.

iii. Reasons for making the gift.

iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.

v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.

vi. In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India or as per any internationally accepted pricing methodology on arm's length basis for listed companies and unlisted companies, respectively.

vii. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.

viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 **during a financial year***.

* RBI's A.P. (DIR Series) Circular No. 14 Dated 15.09.2011

ix. A declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof.

Annex - 4

Definition of "relative" as given in Section 2 (77) of Companies Act, 2013

"Relative", with reference to any person, means any one who is related to another, if-

(a) they are members of a Hindu undivided family ;

(b) they are husband and wife ; or

(c) one person is related to the other in such manner as may be prescribed.

****

Annex - 5

Report by the Indian company receiving amount of consideration for issue of shares / Convertible debentures under the FDI Scheme

(To be filed by the company through its Authorised Dealer Category-I bank, with the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the company making the declaration is situated, not later than 30 days from the date of receipt of the amount of consideration, as specified in para 9 (I) (A) of Schedule I to Notification No. FEMA 20/2000- RB dated May 3, 2000)

Permanent Account Number (PAN) of the investee company given by the IT Department	☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

No.	Particulars	(In Block Letters)
1.	Name of the Indian company Address of the Registered Office	
	Fax	
	Telephone	
	e-mail	
2	Details of the foreign investor/ collaborator	
	Name Address Country	
3.	Date of receipt of funds	
4.	Amount	In foreign currency / In Indian Rupees
5.	Whether investment is under Automatic Route or Approval Route If Approval Route, give details (ref. no. of approval and date)	Automatic Route / Approval Route
6.	Name of the AD through whom the remittance is received	
7.	Address of the AD	

A Copy of the FIRC evidencing the receipt of consideration for issue of shares/ convertible debentures as above is enclosed.

(Authorised signatory of the investee company) (Stamp)	(Authorised signatory of the AD) (Stamp)

FOR USE OF THE RESERVE BANK ONLY:

Unique Identification Number for the remittance received: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Annex – 6

Know Your Customer (KYC) Form in respect of the non-resident investor

Registered Name of the Remitter / Investor (Name, if the investor is an Individual)	
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the remitter	

* Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter as prevalent in the remitter's country

We confirm that all the information furnished above is true and accurate** as* ***provided by the overseas remitting bank of the non-resident investor.

(Signature of the Authorised Official
of the AD bank receiving the remittance)

Date : Place:

Stamp :

Annex – 7

Confidential

RESERVE BANK OF INDIA

Annual Return on Foreign Liabilities and Assets *as on* **31 March, 20 _ _**
(Return to be filled under A.P. (DIR Series) Circular No. 145 dated June 18, 2014 and submitted to the Department of Statistics and Information Management, RBI, Mumbai)

Please read the guidelines/definitions carefully before filling-in the Return

(Respondents are encouraged to submit the e-form of this return, which can be downloaded from the FEMA Forms section under the 'Forms' category on the RBI website, www.rbi.org.in. The e-form is easy-to-fill with user guidance and consistency checks. The duly filled-in e-form should be emailed to fla@rbi.org.in.

Section I
(Identification Particulars)

1. Name and Address of the Indian Company:
Name of the Company: ______________________
Address: ____

City: State:
Pin:

2. PAN Number of Company given by Income Tax Department **(10 digit)**

☐☐☐☐☐☐☐☐☐☐

3. CIN Number allotted by Ministry of Corp. Affairs, Govt. of India **(21 digit)**

4. Contact Details

Contact Person
Name:
Designation: Telephone No: Fax:
e-mail: &RP 51Q 's Web- Site (if any):

5. Account closing date **(DD/MM/YYYY)**

6. Nature of Business: ______________________________________
(As per National Industrial Classification (NIC) 2008 Code)

7. Whether your Company Name has changed during the last financial year (April - March) **(Y/N)**? ☐
If yes, please specify the Company's old Name

Company's old Name: ____
Effective Date **(DD/MM/YYYY)**

☐☐☐☐☐☐☐☐

8. Whether the Company is listed **(Y/N)**?
If yes, please furnish the share price on closing date of reference period

	Face Value (Per Share)	Market Value (Per Share)	
	Latest March	Previous March	Latest March
Ordinary/Equity Share			

9. Identification of the reporting Company **(in terms of inward FDI)**
(a) Subsidiary of Foreign entity (b) Associate of foreign entity
(c) Public Private Partnership (d) Special Purpose Vehicle (e)Other

10. Whether the Company is Asset Management Company **(Y/N)**?

11. Whether the Company has Technical Foreign collaboration **(Y/N)**?

12. Whether the company has any business activity during the latest financial year (April - March) (Y/N)?

Section II

(Financial Details)

Block 1: Financial Detail of Reporting Company

CARE: Information should be reported for all the reference period, i.e. Previous March and Latest March. If reporting period is different from Account Closing Period, then information should be given on internal assessment basis for the reference period

Block 1A: Total Paid- up Capital of Indian Company:

Item	End-of Previous March		End-of Latest March	
	Number of Shares in actual	Amount in Rs lakh	Number of Shares in actual	Amount in Rs lakh
1.0 Total Paid-up Capital (= 1.1 + 1.2)				
1.1 Total Equity & Participating Preference Share capital (= 1.1(a) + 1.1(b))				
(a) Ordinary/Equity Share*				
(b) Participating Preference Share				
1.2 Non-participating Preference Share#				
2.0 Non-resident Holdings (at face value in Rs lakh)				
21 Equity & Participating Preference share capital (Sum of item-1 to item-12)				
1 Individuals				
2 Companies				
3 Foreign Institutional Investors (FIIs)				
4 Foreign Venture Capital Investors (FVCIs)				
5 Foreign Trusts				
6 Private Equity Funds				
7 Pension/ Provident Funds				
8 Sovereign Wealth Fund (SWF)				
9 Partnership/ Proprietorship firms				
10 Financial Institutions				
11 NRIs/PIO				
12 Others non-resident holdings				

2.2 Non-Participating Preference share				
3.0 Non Resident Equity & Participating Preference share capital %				

Note*In case of different class of Equity Share (class A, class B etc.), consolidated figure should be reported.

#Non-participating Preference Share do not have following rights.

(a) to receive dividend, out of surplus profit after paying the dividend to equity shareholders.
(b) to have share in surplus assets remaining after the entire capital is paid in case of winding up of the company.

Block 1B: Profit and Loss Account **(from P/L Account)**

Item	Amount in Rs lakh	
	Previous Year (April - March)	Latest Year (April - March)
3.1Profit (+) /Loss (-) before tax **(During the Year)**		
3.2 Profit (+) / Loss (-) after tax **(During the Year)**		
3.3 Dividend (Interim & Final Dividend)		
3.4 Tax on Dividend (if any)		
3.5 Retained Profit (= 3.2 - 3.3 - 3.4)		

Block 1C: Reserves & Surplus **(from Balance Sheet)**

Item	Amount in Rs lakh as at the end of	
	Previous March	Latest March
4.1 Reserves **(Excluding Profit and Loss account balance)**		
4.2 Profit (+) and Loss (-) account balance		
4.3 Reserve and Surplus (= 4.1 + 4.2)		
4.4 Net worth of Company (= 1.1 + 4.3)		

Block 1D: Sales and Purchase made during the reference year

Note: To be filled in by company where single foreign direct investor holding is more than 50% in total equity (i.e. If reporting Indian company is subsidiary of Foreign company).

Item	Amount in Rs lakh (During the year)	
	Previous Year (April-March)	Latest Year (April-March)
5.1 Domestic Sales		

5.2 Exports		
5.3 Total Sales (= 5.1+ 5.2)		
5.4 Domestic purchase		
5.5 Imports		
5.6 Total Purchase (= 5.4 + 5.5)		

Section III

(FOREIGN LIABILITIES)

CARE: Information should be reported for all the reference period, i.e. Previous March and Latest March. If Account Closing Period of the company is different from reference period, then information should be reported on internal assessment basis for the reference period.

2. Investments made in India:

(i) In case of **listed companies,** equity should be valued **using share price on closing date of reference period.** (ii) In case of **unlisted companies, Own Fund of Book Value (OFBV) Method** should be used for equity valuation.

Block-2A:

Investment in India under Foreign Direct Investment (FDI) scheme (10% or more Equity Participation).

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were **individually holding 10 per cent or more** ordinary/equity & preference shares of your company on the reference date]

Name of the non-resident Company/ Individual	Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
				Previous March	Latest March
	1.0 Equity Capital (= 1.1 - 1.2)				
	1.1 Liabilities to Direct				
	1.2 Claims on Direct Investor				
	2.0 Other Capital #				
	2.1 Liabilities to Direct				
	2.2 Claims on Direct Investor				

Note:
(i) If the information is to be furnished for more than one investor, then add separate Block with same format
(ii) #: Other capital, item 2.1 & 2.2 of Block-2A includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company

with its director investor indicated in Block-2A.

Block 2B:

Investment in India under Foreign Direct Investment (FDI) scheme (Less than 10% Equity Holding)

[Please furnish here the outstanding investments made under the FDI Scheme in India by Non-resident Direct investors, who were individually holding less 10 than per cent ordinary/equity and participating preference shares of your company on the reference date].

Country-wise consolidated information should be provided below:

Type of Capital	Country of non-resident investor	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
			Previous March	Latest March
1.0 Equity Capital (= 1.1-1.2)				
1.1 Liabilities to Direct Investor				
12 Claims on Direct Investor (Reverse investment)				
2.0 Other Capital (= 2.1-2.2) #				
2.1 Liabilities to Direct Investor				
2.2 Claims on Direct Investor				

Note:

(i) If the information is to be furnished for more than one country, then add separate Block-2B with same format.

(ii) #: Other capital, item 2.1 & 2.2 of Block-2B includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with **non-resident investors holding less than 10 per cent equity and related parties.**

Block2C. Portfolio Investment in India

Please furnish here the outstanding investments by non-resident investors, other than those made under Foreign Direct Investment Scheme in India (i.e. other than those reported in Block-2A & Block-2B).

Portfolio Investment	Equity & Participating Preference share capital holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
		Previous March	Latest March
1.0 Equity Securities (at Market Value)			

2.0 Debt Securities (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto1year)			
2.2 Bonds and Other instruments (original maturity more than 1year)			

Please ensure that Non-resident Equity & Participating Preference share capital mentioned at item 2.1 of block 1(A) should be reported in either Block-2A or Block-2B or Block-2C at Market Value i.e. sum of equity % in Block-2A, Block-2B & Block-2C must be equal to the item 3.0 of Block-1A for the latest march.

Section IV

(FOREIGN ASSETS)

1. Please use the **exchange rate as at end-March Previous FY and end-March Latest FY** (as applicable) of reporting year while reporting the **foreign Assets in Rs lakh**.
2. If overseas company is listed; equity should be valued using share price on closing date of reference period **(Item 1.1 of Block 4A & 4B and Item 1.1 of Block 5).**
3. If overseas company is **unlisted, Own Fund of Book Value (OFBV)** Method should be used for valuation of equity investment **(Item 1.1 of Block 4A & 4B and Item 1.1 of Block 5)**..

Block-3: Equity Capital (PUC), Reserves & Surplus of Direct Investment Enterprise (DIE) Abroad (10% or more equity holding by Indian Reporting company)

[Please report here the total equity of DIE, **equity held by your company**, reserves (excluding P&L Account) and P&L Account of those DIEs in each of which your company hold 10% or more equity shares on the reference date.]

Name of the DIE	Item	Currency	Amount in Foreign Currency as at the end of (in	
			Previous March	Latest March
	3.1 Total Equity of DIE (Paid up capital of DIE)			
	3.2 Equity of DIE held by you (at face value)			
	3.3 Reserves (Excluding P&L Account)			
	3.4 Profit and Loss Account balance			
	3.5 Reserve and Surplus (3.5=3.3+3.4)			
	3.6 Net Worth of DIE (3.6 =3.1+3.5)			
	3.7 Exchange rate in Rs per unit foreign currency*			

*: Exchange rate of reporting foreign currency against Indian Rs should be given as on closing date of reference period.

Block-4: Direct Investment Abroad under Overseas Direct Investment (ODI) Scheme

Block-4A: Direct Investment Abroad (10% or more equity holding)

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold 10% or more equity shares on the reference date.

Name of the non-resident DIE	Type of Capital	Country of non-resident DIE	Equity holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
				Previous March	Latest March
	1.0 Equity Capital (=1.1-1.2)				
	1. 1Claims on DirectInvestment Enterprise				
	12 Liabilities b Direct Investment Enterprise (Reverse investment)				
	2.0 Other Capital (=2.1-2.2) #				
	21 Claims on Direct Investment Enterprise				
	22 Liabilities to Direct Investment Enterprise				

Note:
(i) If the information is to be furnished for more than one overseas company, then ADD separate Block 3 and Block 4A with the same format. (ii) #: Other capital, item 2.1 & 2.2 of Block-4A includes all other liabilities and claims at Nominal value, except equity shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its DIE reported in **Block-4A**.

Block-4B: Direct Investment Abroad (Less than 10% equity holding)

Please furnish here the market value of outstanding investments in DIE, made by your company under the ODI Scheme, in each of which your company hold less than 10 % equity shares on the reference date.

Type of Capital	Country of non-resident DIE	Equity holding per cent as at the end of latest year (%)	Amount in Rs lakh as at the end of	
			Previous March	Latest March
1.0 Equity Capital (=1.1-1.2)				
1. 1Claims on Direct Investment Enterprise				
1.2 Liabilities to Direct Investment Enterprise (Reverse investment)				

2.0 Other Capital (=2.1-2.2) #			
2.1 Claims on Direct Investment Enterprise			
2.2 Liabilities to Direct Investment Enterprise			

Note:
(i) If the information is to be furnish for more than one country, then use the ADD Block 4B with the same format.
(ii) # : Other capital, item 2.1 & 2.2 of Block-4B includes all other liabilities and claims at Nominal value, except equity, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with **non-resident companies where Indian company holds less than 10 per cent equity and also with related parties.**

Block-5: Portfolio Investment Abroad

Please furnish here the market value of outstanding investments in non-resident enterprises, other **than those made under ODI scheme reported in Block-4.**

Portfolio Investment	Country of non-resident enterprise	Amount in Rs lakh as at the end of	
		Previous March	Latest March
1.0 Equity Securities (at Market Value)			
2.0 Debt Securities (=2.1+2.2)			
2.1 Money Market Instruments (original maturity upto1 year)			
2.2 Bonds and Other instruments (original maturity more than 1 year)			

Note:
(i) Country wise consolidated information pertaining to each type of investment should be reported separately.
(ii) If the information is to be furnish for more than one country, then use the ADD Block 5 with the same format..

Section IV-A

Outward Foreign Affiliates Trade Statistics (Outward FATS)

Please provide the amount in foreign currency (in actual) in all blocks of Section IV-A

Block-3B: Imports, Exports, Total Sales and Total Purchase of Direct Investment Enterprise (DIE) Abroad (more than 50% equity holding by Indian reporting company)

Name of the DIE	Item	Currency	Amount in Foreign Currency actual (During the year)	
			Previous Year (April-March)	Latest Year (April-March)
	3.8 Total Sales			
	3.8.1 of which Exports			
	3.9 Total			

	Purchases			
	3.9.1 of which Imports			

Section V

(Other Assets and Liabilities with foreign unrelated parties)

Block 6: Other Investment (i.e., position with foreign unrelated parties)

This is a residual category that includes all financial outstanding liability and claims not considered as direct investment or portfolio investment.

Other Investment	Outstanding Liabilities with foreign unrelated party		Outstanding claims on foreign unrelated party	
	Amount in Rs lakh as at the end of			
	Previous March	Latest March	Previous March	Latest March
6.1 Trade Credit				
6.2 Loans				
6. 3 Currency & Deposits				
6. 4 Other receivable and payable accounts				

[e-Form version of this Return is available on the FEMA Forms section under the 'Forms' category on the RBI website (www.rbi.org.in). System Requirement: MS-Excel 2003 and above, with macro enabled]

Place: Signature and Name of the Authorized person

Date: Seal/Stamp of the Company

Annex – 8

Form FC-TRS

Declaration regarding transfer of shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures /others by way of sale from resident to nonresident / non-resident to resident

(to be submitted to the designated AD branch in quadruplicate within 60 days from the date of receipt of funds)

The following documents are enclosed

For sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident in India

i. Consent Letter duly signed by the seller and buyer or their duly appo nted agent and in the latter case the Power of Attorney Document.
ii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India.
iii. Certificate indicating fair value of shares from a Chartered Accountant.
iv. Copy of Broker's note if sale is made on Stock Exchange.
v. Declaration from the buyer to the effect that he is eligible to acquire shares / compulsorily and mandatorily convertible preference shares / debentures/others under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
vi. Declaration from the FII/sub account to the effect that the individual FII / Sub account ceiling as prescribed has not been breached.

Additional documents in respect of sale of shares / compulsorily and mandatorily convertible preference shares / debentures / others by a person resident outside India

vii. If the sellers are NRIs/OCBs, the copies of RBI approvals, if applicable, evidencing the shares held by them on repatriation/non-repatriation basis.
viii. No Objection/Tax Clearance Certificate from Income Tax Authority/ Chartered Account.

1	**Name of the company**	
	Address (including e-mail , telephone Number, Fax no)	
	Activity	
	NIC Code No.	

2	**Whether FDI is allowed under Automatic route**	
	Sectoral Cap under FDI Policy	
3	**Nature of transaction** *(Strike out whichever is not applicable)*	Transfer from resident to non resident / Transfer from non resident to resident
4	**Name of the buyer**	
	Constitution / Nature of the investing Entity Specify whether 1. Individual 2. Company 3. FII 4. FVCI[#] 5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[∂]) 9. Partnership / Proprietorship firm 10. Financial Institution 11. NRIs / PIOs 12. others	
	Date and Place of Incorporation	
	Address of the buyer *(including e-mail, telephone number. Fax no.)*	
5	**Name of the seller**	
	Constitution / Nature of the disinvesting entity Specify whether 1. Individual 2. Company 3. FII 4. FVCI[##]	

[#] The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000

[∂] SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

[##] The initial investment/s was/were made by FVCI under FDI Scheme in terms of Schedule 1 to Notification No. FEMA.20/2000-RB dated May 3, 2000.

[∂] SWF mean a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of monetary authorities.

	5. Foreign Trust 6. Private Equity Fund 7. Pension/ Provident Fund 8. Sovereign Wealth Fund (SWF[3]) 9. Partnership/ Proprietorship firm 10. Financial Institution 11. NRIs/PIOs 12. Others[i]	
	Date and Place of Incorporation	
	Address of the seller *(including e-mail, telephone Number Fax no)*	
6	**Particulars of earlier Reserve Bank / FIPB approvals**	

7	**Details regarding shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures/ others (such as FDI compliant instruments like participating interest rights in oil fields, etc.) to be transferred**				
	Date of the transaction	***Number of shares CMCPS / debentures /others***	***Face value in Rs.***	***Negotiated Price for the transfer**in Rs.***	***Amount of consideration in Rs.***

8	**Foreign Investments in the company**		No. of shares	Percentage
		Before the transfer		
		After the transfer		
9.	**Where the shares / CMCPS / debentures / others are listed on Stock Exchange**			

	Name of the Stock Exchange	
	Price Quoted on the Stock exchange	

	Where the shares / CMCPS / debentures / others are Unlisted	
	Price as per Valuation guidelines*	
	Price as per Chartered Accountants * / ** Valuation report (CA Certificate to be attached)	

Declaration by the transferor / transferee I / We hereby declare that

i. The particulars given above are true and correct to the best of my/our knowledge and belief.
ii. I/ We, was/were holding the shares compulsorily and mandatorily convertible preference shares / debentures/ other as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis.
iii. I/ We, am/are eligible to acquire the shares compulsorily and mandatorily convertible preference shares / debentures /other of the company in terms of the FDI Policy. It is not a transfer relating to shares compulsorily and mandatorily convertible preference shares / debentures /others of a company engaged in financial services sector or a sector where general permission is not available.
iv. The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to.

Signature of the Declarant or his duly authorised agent

Date:
Note:

In respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/ others from resident to non resident the declaration has to be signed by the non resident buyer, and in respect of the transfer of shares / compulsorily and mandatorily convertible preference shares / compulsorily and mandatorily convertible debentures/ other from non-resident to resident the declaration has to be signed by the non-resident seller.

Certificate by the AD Branch

It is certified that the application is complete in all respects.

The receipt / payment for the transaction are in accordance with FEMA Regulations / Reserve Bank guidelines.

Signature

Name and Designation of the Officer

Date : Name of the AD Branch
AD Branch Code

Know Your Customer (KYC) Form in respect of the non-resident investor

Registered Name of the Remitter / Investor (Name, if the investor is an Individual)	
Registration Number (Unique Identification Number* in case remitter is an Individual)	
Registered Address (Permanent Address if remitter Individual)	
Name of the Remitter's Bank	
Remitter's Bank Account No.	
Period of banking relationship with the Remitter	

*Passport No., Social Security No, or any Unique No. certifying the bonafides of the remitter as prevalent in the remitter's country.

We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident investor.

(Signature of the Authorised Official
of the AD bank receiving the remittance)

Date: Place:

Stamp :

Proforma

Statement of inflows/outflows on account of remittance received/made in connection with transfer of shares / compulsorily and mandatorily convertible preference shares / debentures/others/other, by way of sale

Category-wise

Part A - NRI/erstwhile OCB

Part B - Foreign National/non-resident incorporated entity

Part C - Foreign Institutional Investors

Inflow -Transfer from resident to non-resident

[Amount in Rs.]

Date of Transaction	Name of the Company	Activity	NIC Code	Name of the Buyer	Constitution/ Nature of Business of the Buyer	Name of the Seller	Constitution/ Nature of Business of the Seller	No. of Shares transferred	Face Value	Sale price per share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Outflow - Transfer from non-resident to resident

[Amount in Rs.]

Date of Transaction	Name of the Company	Activity	NIC Code	Name of the Seller	Constitution/ Nature of Business of the Seller	Name of the Buyer	Constitution/ Nature of Business of the Buyer	No. of Shares transferred	Face Value	Sale price per share	Total Inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Annex-9

Form DRR

Return to be filed by the Domestic Custodian who has arranged issue/transfer of Depository Receipts

Instructions: The Form should be completed and submitted by the Domestic Custodian to the Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai.

1. Name of the Domestic Custodian :
2. Address of the Domestic Custodian:
3. Details of the Security:
4. Details of the issuer of the security
5. Activity of the issuer of security (please give the NIC Code of the activity in which the company is predominantly engaged)[7]
6. Whether sponsored or unsponsored
7. If sponsored, name and address of the sponsorer.
8. Name and address of the Lead Manager/ Investment/Merchant Banker
9. Name and address of the Sub-Managers to the issue
10. Details of FIPB approval (If foreign investment in the company is subject to FIPB approval)
11. Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details.
12. If the issue of DR increases the equity capital of the company or is sponsored by the company:

Details of the Equity Capital

	Before Issue	After Issue
a Authorised Capital		

[7] In terms of AP (DIR Series) Circular No 5 dated July 17, 2014, NIC 2008 codes may be reported

b Issued and Paid-up Capital

(i) Held by persons Resident in India

(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list of foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)

(iii)Held by NRIs/PIOs

(iv)Held by FIIs/QFIs/registered FPIs

Total Equity held by non-residents

c Percentage of equity held by non-residents to total paid-up capital

d Details of repatriation/utilisation of the proceeds

13. Number of DRs issued
14. Ratio of DRs to underlying securities
15. Whether funds are kept abroad. If yes, name and address of the bank
16. Whether the DR is listed/traded on an International Exchange or trading platform. If so, details of the exchange/trading platform.

    Name of Stock Exchange
    Date of commencement of trading
17. The date on which DRs issue was launched

Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with.

Sd/-
Chartered Accountant

Sd/-
Authorised Signatory of the Company

Annex - 10

Certificate to be Furnished by the Prospective Investor as well as the Prospective Recipient Entity
(Para 6.2.19.3 (ii))

It is certified that the following is the complete list of all inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity

1. ………………
2. ………………
3. ………………

(copies of all agreements to be enclosed)

It is also certified that none of the inter-se agreements, including the shareholders agreement, entered into between foreign investor(s) and investee brownfield pharmaceutical entity contain any non-compete clause in any form whatsoever.

It is further certified that there are no other contracts/agreements between the foreign investor(s) and investee brownfield pharma entity other than those listed above.

The foreign investor(s) and investee brownfield pharma entity undertake to submit to the FIPB any inter-se agreements that may be entered into between them subsequent to the submission and consideration of this application.

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY ORIGINAL JURISDICTION
WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

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[Vol.II of Vol-V]

Sr. No.	Particulars	Pages
10.	**Annexure-P2**: A copy Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.	195-282
11.	**Annexure-P3**: A copy of the judgment in the case of *Federation of Association of Maharashtra Vs. Union of India* reported in ILR (2004) II Delhi 530.	283-313
12.	**Annexure-P4**: A copy of the press Note No.4 dated 10.2.2006.	314-324
13.	**Annexure-P5**: A copy of the paper prepared by ASSOCHAM, India.	325-358
14.	**Annexure-P6**: A copy of the fact sheet on FDI from April 2000 and Feb. 2015.	359-367
15.	**Annexure-P7**: A copy of the WTO Report on e-commerce, development and small, medium sized enterprises.	368-392

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

Filed on 18.5.2015
New Delhi

ANNEXURE-P-2

3.20

FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2000*

FEMA 20/2000-RB, dated 3-5-2000 [GSR 406(E), dated 3-5-2000] - In exercise of the powers conferred by clause (b) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations to prohibit, restrict or regulate, transfer or issue security by a person resident outside India, namely :—

Short title and commencement.

1. (1) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

(2) They shall come into effect on the 1st day of June, 2000.

Definitions.

2. In these Regulations, unless the context requires otherwise,—

(*i*) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);

[1][(*ia*) 'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);]

*MASTER CIRCULAR : No. 15/2014-15, dated 1-7-2014.

LATEST CLARIFICATIONS : *SEE*

- AP (DIR Series) (2005-06) Circular No. 4, dated 29-7-2005.
- AP (DIR Series) (2005-06) Circular No. 6, dated 11-8-2005.
- AP (DIR Series) (2005-06) Circular No. 7, dated 17-8-2005.
- AP (DIR Series) (2005-06) Circular Nos. 8 and 16, dated 25-8-2005 and 4-11-2005.
- AP (DIR Series) (2005-06) Circular No. 24, dated 25-1-2006.
- AP (DIR Series) (2006-07) Circular No. 4, dated 28-7-2006.
- AP (DIR Series) (2006-07) Circular No. 25, dated 22-12-2006; Circular No. 40, dated 20-4-2007; Circular No. 62, dated 24-5-2007; Circular No. 73, dated 8-6-2007 and Circular No. 74, dated 8-6-2007.
- AP (DIR Series) (2007-08) Circular No. 20, dated 14-12-2007; Circular No. 22, dated 19-12-2007; Circular No. 23, dated 31-12-2007; Circular No. 40, dated 28-4-2008; Circular No. 41, dated 28-4-2008 and Circular No. 44, dated 30-5-2008.
- AP (DIR Series) (2008-09) Circular No. 1, dated 11-7-2008, No. 25, dated 17-10-2008 and No. 63, dated 22-4-2009.
- AP (DIR Series) (2009-10) Circular No. 5, dated 22-7-2009, Circular No. 47, dated 12-4-2010 and Circular No. 49, dated 4-5-2010.
- AP (DIR Series) (2010-11) Circular Nos. 13, dated 14-9-2010, 45, dated 15-3-2011, 54, dated 29-4-2011, 55, dated 29-4-2011, 57, dated 2-5-2011, 58, dated 2-5-2011 and 74, dated 30-6-2011.
- AP (DIR Series) (2011-12) Circular No. 8, dated 9-8-2011, Circular Nos. 14 and 16, dated 15-9-2011, Circular No. 42, dated 3-11-2011, Circular No. 43, dated 4-11-2011, Circular No. 45, dated 16-11-2011, Circular No 49, dated 22-11-2011, No. 57, dated 13-12-2011, No. 67, dated 13-1-2012, No. 89, dated 1-3-2012, No. 93, dated 19-3-2012, No. 94, dated 19-3-2012, No. 120, dated 8-5-2012, No. 121, dated 8-5-2012, No. 127, dated 15-5-2012, No. 133, dated 20-6-2012, No. 135, dated 25-6-2012 and No. 137, dated 28-6-2012.

See also AP (DIR Series) (2012-13) Circular No. 16, dated 22-8-2012, Circular No. 19, dated 28-8-2012, Circular No. 32, dated 21-9-2012, Circular No. 36, dated 26-9-2012, Circular No. 41, dated 10-10-2012, Circular No. 74, dated 10-1-2013, Circular No. 76, dated 17-1-2013, Circular No. 80, dated 24-1-2013, Circular No. 90, dated 14-3-2013, Circular No. 94, dated 1-4-2013, Circular No. 104, dated 17-5-2013 and Circular No. 110, dated 12-6-2013, Circular No. 111, dated 12-6-2013 and Circular No. 121, dated 26-6-2013.

See also AP (DIR Series) (2013-14) Circular No. 1, dated 4-7-2013, Circular No. 28, dated 19-8-2013, Circular No. 29, dated 20-8-2013, Circular No. 37, dated 5-9-2013, Circular No. 38, dated 6-9-2013, Circular No. 42, dated 12-9-2013, Circular No. 44, dated 13-9-2013, Circular No. 68, dated 1-11-2013, Circular No. 69, dated 8-11-2013, Circular No. 72, dated 11-11-2013, Circular No. 74, dated 11-11-2013, Circular No. 84, dated 6-1-2014, Circular No. 86, dated 9-1-2014, Circular No. 99, dated 29-1-2014, Circular No. 102, dated 11-2-2014, Circular No. 104, dated 14-2-2014, Circular No. 107, dated 20-2-2014, Circular No. 112, dated 25-3-2014, Circular No. 118, dated 7-4-2014, Circular No. 123, dated 16-4-2014, Circular No. 124, dated 21-4-2014, Circular No. 127, dated 2-5-2014, Circular No. 139, dated 5-6-2014, Circular No. 140, dated 6-6-2014 and Circular No. 141, dated 6-6-2014.

See also AP (DIR Series) (2014-15) Circular No. 3, dated 14-7-2014, Circular No. 4, dated 15-7-2014, Circular No. 6, dated 18-7-2014, Circular No. 13, dated 23-7-2014, Circular No. 22, dated 28-8-2014, Circular No. 31, dated 17-9-2014, Circular Nos. 45 and 46, dated 8-12-2014 and Circular No. 47, dated 8-12-2014.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2006, w.r.e.f. 8-11-2005.

[1][(*ii*) 'Capital' means equity shares, preference shares and convertible debentures.]

[2][Explanation.—*The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, mandatorily and fully convertible;*]

[3][(*iia*) 'entity incorporated outside India' means an entity incorporated/registered under the relevant statutes, laws of the host country;]

[4][(*iib*) 'preference shares' means compulsorily and mandatorily convertible preference shares;]

[5][(*iic*) 'debenture' means compulsorily and mandatorily convertible debenture;]

[6][(*iid*) 'Domestic Depository' shall have the meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004;

(*iie*) 'Eligible Company' means a Company eligible to issue Indian Depository Receipts under rule 4 of the Companies (Issue of Indian Depository Receipts) Rules, 2004;]

(*iii*) 'registered Foreign Institutional Investor (FII)' means the foreign institutional investor registered with SEBI. [7][Any foreign institutional investor who holds a valid certificate of registration from SEBI shall be deemed to be a registered foreign portfolio investor (RFPI) till the expiry of the block of three years];

[8][(*iiia*) 'Foreign Venture Capital Investor' means an investor incorporated and established outside India which proposes to make investment in Venture Capital Fund(s) or Venture Capital Undertaking(s) in India and is registered with SEBI under SEBI (Foreign Venture Capital Investors) Regulations, 2000;]

[9][(*iiib*) 'Foreign Central Bank' means an institution/organisation/body corporate established in a country outside India and entrusted with the responsibility of carrying out central bank functions under the law for the time being in force in that country;]

(*iv*) 'Government approval' means approval from the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India or as the case may be, Foreign Investment Promotion Board (FIPB) of the Government of India;

[10][(*iva*) 'Group company' means two or more enterprises which, directly or indirectly, are in a position to :

(*i*) exercise twenty-six per cent, or more of voting rights in other enterprise; or

(*ii*) appoint more than fifty per cent, of members of board of directors in the other enterprise;]

(*v*) 'Indian company' means a company incorporated in India;

[11][(*va*) 'Indian Depository Receipts (IDRs)' shall have the meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004;]

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 1-5-2007. Prior to its substitution, clause (*ii*) read as under:
   "(*ii*) 'Capital' means equity shares, preference shares, convertible preference shares and convertible debentures;"
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2003, w.e.f. 3-10-2003.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 1-5-2007.
5. Inserted, *ibid.*, w.r.e.f. 8-6-2007.
6. Clauses (*iid*) and (*iie*) inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.
7. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
8. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2000, w.e.f. 26-12-2000.
9. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2007, w.e.f. 17-10-2007.
10. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment) Regulations, 2013, w.r.e.f. 3-6-2013.
11. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.

[1][[2][(vb)] 'Indian Venture Capital Undertaking' means a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI;]

(vi) 'Investment on repatriation basis' means an investment the sale proceeds of which are, net of taxes, eligible to be repatriated out of India, and the expression 'Investment on non-repatriation basis', shall be construed accordingly;

(vii) Joint Venture (JV) and Wholly Owned Subsidiary shall have the meanings respectively assigned to them in the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;

[3][(viiA) 'Limited Liability Partnership (LLP)' means a partnership formed and registered under the Limited Liability Partnership Act, 2008;]

[4][(viia) NRI shall have the same meaning assigned to him under the Foreign Exchange Management (Deposit) Regulations, 2000;]

(viii) [5][***] 'Overseas Corporate Body (OCB)', shall have the meanings respectively assigned to them in the Foreign Exchange Management (Deposit) Regulations, 2000;

[6][(viiia) 'Qualified Foreign Investor' (QFI) means:

(a) during the period from 9th day of August, 2011 to 15th day of July, 2012, a person who satisfied the following criteria at the relevant time,

(i) resident of a country, that is compliant with the Financial Action Task Force (FATF) standards and is a signatory to the IOSCO's Multilateral Memorandum of Understanding (MMoU); and

(ii) satisfied the KYC requirements stipulated by SEBI:

Provided that such a person is not registered with SEBI as a Foreign Institutional Investor (FII) or Foreign Venture Capital Investor (FVCI).

(b) with effect from 16th day of July, 2012, a person who satisfies the following criteria at the relevant time:

(i) Resident in a country that is a member of FATF or a member of a group which is a member of FATF; and

(ii) Resident in a country that is a signatory to IOSCO's MMoU (and referred to as Appendix A Signatories therein) or a signatory of a bilateral MoU with SEBI:

Provided that the person is not resident in a country listed in the public statements issued by FATF from time to time on jurisdictions having strategic AML/CFT deficiencies to which counter measures apply or that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies:

Provided that such person is not resident in India:

Provided further that such person is not registered with SEBI as a FII or Sub-Account of an FII or FVCI.

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1. Inserted by FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2000, w.e.f. 26-12-2000.
2. Renumbered by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2014, w.r.e.f. 20-5-2011.
4. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2004, w.e.f. 30-8-2004. Prior to its substitution, it was inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India)(Second Amendment) Regulations, 2003, w.e.f. 18-6-2003 and it read as under :
   '(viia) 'Non-resident Indian (NRI)' shall have the meaning assigned to it in clause (iv) of regulation 2 of the Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000;'
5. Words "'Non-resident Indian (NRI)', " omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2004, w.e.f. 30-8-2004.
6. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 9-8-2011.

Explanation.—For the purposes of this clause :

1. 'bilateral MoU with SEBI' shall mean a bilateral MoU between SEBI and the overseas regulator that, inter alia, provides for information sharing arrangements.
2. Member of FATF shall not mean an associate member of FATF;]

[1][(*viiib*) A Registered Foreign Portfolio Investor (RFPI) means a person registered in accordance with the provisions of Securities Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

Explanation.—[2][***]]

(*ix*) 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*x*) 'Secretariat for Industrial Assistance' means Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India;

(*xi*) 'Transferable Development Rights (TDR)' shall have the same meaning as assigned to it in the Regulations made under sub-section (2) of section 6 of the Act;

[3][(*xia*) 'Venture Capital Fund' means a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations;]

[4][(xib) *'Warrant' includes share warrant issued by an Indian company in accordance to provisions of the Companies Act, as applicable. Such warrants shall be treated as security within the meaning of section 2(za) of FEMA, 1999;*]

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

Restriction on issue or transfer of Security by a person resident outside India.

3. Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall issue or transfer any security:

Provided that a security issued prior to, and held on, the date of commencement of these Regulations, shall be deemed to have been issued under these Regulations and shall accordingly be governed by these 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 issue or transfer any security, subject to such conditions as may be considered necessary.

Restriction on an Indian entity to issue security to a person resident outside India or to record a transfer of security from or to such a person in its books.

4. Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person :

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifteenth Amendment) Regulations, 2014, w.e.f. **21-11-2014**. Prior to its omission, *Explanation* read as under :
   "*Explanation.*—For the purpose of this regulation, the expressions 'person', 'resident in India', 'non-resident' shall have the same meaning as assigned to them, in section 2(*u*), 2(*v*) and 2(*w*) of Foreign Exchange Management Act (FEMA), 1999, respectively;"
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2000, w.e.f. 26-12-2000.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.

Permission for purchase of shares by certain persons resident outside India.

5. (1)[1][*(i) A person resident outside India (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures or warrants of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.*

Explanation.—*Shares or convertible debentures containing an optionality clause but without any option/right to exit at an assured price shall be reckoned as eligible instruments to be issued to a person resident outside India by an Indian company subject to the terms and conditions as specified in Schedule 1.*]

[2][(*ii*) Notwithstanding anything contained in sub-regulation (*i*) above, a person who is a citizen of Bangladesh or an entity incorporated in Bangladesh may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase [3][*shares or convertible debentures or warrants*] of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.]

[4][(*iii*) Further, notwithstanding anything contained in clause (*i*) of the sub-regulation (1) above, a person who is a citizen of Pakistan or an entity incorporated in Pakistan may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase [3][*shares or convertible debentures or warrants*] of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 :

Provided further that notwithstanding anything contained in Schedule 1, the Indian company, receiving such foreign direct investment, is not engaged or shall not engage in sectors/activities pertaining to defence, space and atomic energy and sectors/activities prohibited for foreign investment.]

(2) A registered Foreign Institutional Investor (FII) may purchase [5][*shares or convertible debentures or warrants*] of an Indian company under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 2 [6][and the limits and margin requirements prescribed by RBI/SEBI as well as the stipulations regarding collateral securities as specified by the Reserve Bank from time to time.]

[7][A registered FII including SEBI approved sub-accounts of the FIIs, after registering as RFPI shall not be eligible to invest as FII. However, all investments made by FII in accordance with the

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**. Prior to its substitution, clause (*i*), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventeenth Amendment) Regulations, 2013, w.e.f. 12-11-2013, FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2007, w.e.f. 23-10-2007, FEM (Transfer or Issue of Security by a Person Resident outside India)(Fourth Amendment) Regulations, 2004, w.e.f. 30-8-2004 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2003, w.e.f. 3-10-2003, read as under :

   "(*i*) A person resident outside India (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.

   Further, shares or convertible debentures containing an optionality clause but without any option/right to exit at an assured price shall be reckoned as eligible instruments to be issued to a person resident outside India by an Indian company subject to the terms and conditions as specified in Schedule 1."
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2007, w.e.f. 23-10-2007.
3. Substituted for 'shares and convertible debentures' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 1-8-2012.
5. Substituted for 'shares or convertible debentures' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
6. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2012, w.r.e.f. 12-4-2010.
7. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit]:

[1][***]

[1a][***]

[2][(2A) A Registered Foreign Portfolio Investor (RFPI) may purchase shares or convertible debentures of an Indian company under the Foreign Portfolio Investment (FPI) Scheme subject to the terms and conditions specified in Schedule 2A and the limits and margin requirements prescribed by RBI/ SEBI as well as the stipulations regarding collateral securities as specified by the Reserve Bank from time to time.]

[3][(3) (i) A Non-resident Indian (NRI) may purchase shares or convertible debentures of an Indian Company on a Stock Exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3 [4][***].

(ii) A Non-resident Indian [5][***] may purchase shares or convertible debentures of an Indian Company on non-repatriation basis other than under Portfolio Investment Scheme subject to the terms and conditions specified in Schedule 4 [6][***]].

[7][(4) A non-resident Indian or a registered FII or a Foreign Central Bank [8][or a QFI [2][or a RFPI] or any other person resident outside India included in Schedule 5] may purchase securities, other than shares or convertible debentures of an Indian company, subject to the terms and conditions specified in Schedule 5.]

[9][(5) A Foreign Venture Capital Investor registered with SEBI may make investment in a Venture Capital Fund or an Indian Venture Capital Undertaking, in the manner and subject to the terms and conditions specified in Schedule 6.]

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2005, w.e.f. 22-7-2005. Prior to its omission, proviso was inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002, w.r.e.f. 16-2-2001, read as under:

   "**Provided** that the FII shall not purchase shares or convertible debentures of an Indian company which is engaged in the print media sector."

1a. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2013, w.e.f. 29-5-2013. Prior to its omission, proviso, as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2006, w.r.e.f. 8-11-2005, read as under:

   "**Provided further** that Foreign Institutional Investors shall not invest in the paid up equity capital of Asset Reconstruction Companies."

2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001. Prior to its substitution, sub-regulation (3) was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002, w.r.e.f. 16-2-2001.

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

4. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2005, w.e.f. 22-7-2005. Prior to its omission, it read as under:

   ", provided that the NRI shall not purchase shares or convertible debentures of an Indian Company which is engaged in Print Media sector."

5. Words "or an Overseas Corporate Body" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.

6. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2005, w.e.f. 22-7-2005. Prior to its omission, it was amended by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003 w.e.f. 3-10-2003, and it, read as under:

   ", provided that the NRI shall not purchase shares or convertible debentures of an Indian Company which is engaged in Print Media sector."

7. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2007, w.e.f. 17-10-2007. Prior to its substitution, sub-regulation (4), as amended by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003, read as under:

   "(4) A non-resident Indian or a registered FII may purchase securities, other than shares or convertible debentures of an Indian company, subject to the terms and conditions specified in Schedule 5."

8. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 9-8-2011.

9. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2000, w.e.f. 26-12-2000.

[1][***]

[2][(6) A registered Foreign Institutional Investor (FII) having valid approval under the Foreign Exchange Regulation Act, 1973 or under the Foreign Exchange Management Act, 1999 may trade in all exchange traded derivative contracts approved by RBI/SEBI subject to the limits and margin requirement prescribed by RBI/SEBI as well as the stipulations regarding collateral securities as directed by the Reserve Bank from time to time.]

[3][(6A) A RFPI may trade in all exchange traded derivative contracts approved by RBI/SEBI subject to the limits and margin requirement prescribed by RBI/SEBI as well as the stipulations regarding collateral securities as directed by the Reserve Bank from time to time.]

(7) A Non-Resident Indian (NRI) may invest in exchange traded derivative contracts approved by SEBI from time to time out of INR funds held in India on non-repatriable basis subject to the limits prescribed by SEBI. Such investments will not be eligible for repatriation benefits.

[4][(7A) A QFI may purchase equity shares of an Indian company subject to the terms and conditions specified in Schedule 8. [3][However, a QFI may continue to buy, sell or otherwise deal in securities for a period of one year from the date of commencement of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, or until it obtains a certificate of registration as foreign portfolio investor, whichever is earlier. Further, a QFI after registering as a RFPI, shall not be eligible to invest as QFI. However, all investments made by QFI, in accordance with the regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit.]]

[5][*Explanation :* For the purposes of [6][sub-regulations (1) to (7A)] above, no class of investor referred to in those sub-regulations shall make investment, directly or indirectly, in any security, issued by an Indian company which is engaged or proposes to engage in any of the activities in which foreign investment is prohibited under sub-regulation (*b*) of regulation 4 of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, as amended from time to time.]

[7][(8) A registered Foreign Institutional Investor (FII) including SEBI approved sub-accounts of the FIIs, registered with SEBI [8][a RFPI registered in accordance with the provisions of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014] or a Non-Resident Indian (NRI) may purchase, hold or sell Indian Depository Receipts (IDRs) of eligible companies resident

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2005, w.e.f. 22-7-2005. Prior to its omission, proviso as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002, w.r.e.f. 16-2-2001, read as under :
   "Provided that the Foreign Venture Capital Investor shall not purchase shares or convertible debentures of an Indian company which is engaged in the Print Media Sector."
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 31-12-2007. Prior to its substitution, sub-regulation (6), as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (First Amendment) Regulations, 2003, w.e.f. 17-1-2003, read as under:
   "(6) A registered Foreign Institutional Investor (FII) having valid approval under FERA, 1973 or under FEMA, 1999 may trade in all exchange traded derivative contracts approved by SEBI from time to time subject to the limits as prescribed in by SEBI."
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 13-1-2012.
5. Inserted, *ibid*, w.r.e.f. 19-10-2012.
6. Substituted for "sub-regulations (1) to (7)" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
7. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.
8. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

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outside India and issued in the Indian capital market, subject to the terms and conditions specified in Para 2 of Schedule 7.]

[1][(9) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India, (other than an entity in Pakistan or Bangladesh), not being a registered Foreign Institutional Investor or Foreign Venture Capital Investor or Qualified Foreign Investor registered with SEBI or Foreign Portfolio Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition/ transfer of profit shares in the capital structure of an LLP under Foreign Direct Investment, subject to the terms and conditions as specified in Schedule 9.]

Acquisition of right shares.

6. (1) A person resident outside India may purchase equity or preference shares or convertible debentures offered on right basis by an Indian company which satisfies the conditions specified in sub-regulation (2).

(2) An Indian company which satisfies the following conditions, may offer to a person resident outside India, equity or preference shares or convertible debentures on right basis, namely :—

(*i*) The offer on right basis does not result in increase in the percentage of foreign equity already approved, or permissible under the Foreign Direct Investment Scheme in terms of these Regulations;

[2][(*ii*) The existing non-resident shareholders may apply for issue of additional shares, and the investee company may allot the same subject to the condition that the overall issue of shares to non-residents in the total paid-up capital does not exceed the sectoral cap;]

[3][(*iii*)] The existing shares or debentures against which shares or debentures are issued by the company on right basis were acquired and are held by the person resident outside India in accordance with these Regulations;

[4][(*iv*) The offer on right basis to the persons resident outside India shall be :

(*a*) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

(*b*) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.]

(3) The right shares or debentures purchased by the person resident outside India shall be subject to same conditions including restrictions in regard to repatriability as are applicable to the original shares against which right shares or debentures are issued :

Provided that the amount of consideration for purchase of right shares or debentures is paid by way of inward remittance in foreign exchange through normal banking channels or by debit to NRE/ FCNR account, when the shares or debentures are issued on repatriation basis:

Provided further that in respect of the shares or debentures issued on non-repatriation basis, the amount of consideration may also be paid by debit to NRO/NRSR/NRNR account.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2014, w.r.e.f. 20-5-2011.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2003*, w.r.e.f. 12-11-2002.
   *As corrected *vide* Notification No. GSR 555(E), dated 31-8-2004.
3. Clause (*ii*) renumbered as clause (*iii*) by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2003*, w.r.e.f. 12-11-2002.
   *As corrected *vide* Notification No. GSR 555(E), dated 31-8-2004.
4. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2010, w.e.f. 7-4-2010. Prior to its substitution, clause (*iv*), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2003*, w.r.e.f. 12-11-2002, read as under :
   "(*iv*) The offer on right basis to the persons resident outside India is at a price which is not lower than that at which the offer is made to resident shareholders."
   *As corrected *vide* Notification No. GSR 555(E), dated 31-8-2004.

[1][**Acquisition of Bonus shares.**

6A. An Indian company may issue bonus shares to its non-resident shareholders, subject to the following conditions:

(*a*) the shares against which bonus shares are issued by the company (hereinafter referred to as 'the original shares') were acquired or held by the non-resident shareholder in accordance with the Rules/Regulations applicable to such acquisition;

(*b*) the bonus shares acquired by the non-resident shareholder shall be subject to the same conditions including restrictions in regard to repatriability as are applicable to the original shares.

Report to RBI.

[2][**6B.** A company issuing [3][*right shares or bonus shares or warrants*] in terms of these Regulations shall report to the Reserve Bank in Form FC-GPR as stipulated in Paragraph 9(1)(*b*) of Schedule 1 to these Regulations.]]

[4][**Acquisition of warrants.**

6C. *An Indian company may issue warrants to a person resident outside India subject to terms and conditions stipulated by the Reserve Bank in this behalf from time to time.*]

Issue and acquisition of shares after merger or demerger or amalgamation of Indian companies.

7. (1) Where a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, has been approved by a Court in India, the transferee company or, as the case may be, the new company may issue shares to the shareholders of the transferor company resident outside India, subject to the following conditions, namely:

(*a*) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank, or specified in these Regulations:

Provided that where the percentage is likely to exceed the percentage specified in the approval or the Regulations, the transferor company or the transferee or new company may, after obtaining an approval from the Central Government, apply to the Reserve Bank for its approval under these Regulations;

(*b*) the transferor company or the transferee or new company shall not engage in agriculture, plantation or real estate business or trading in TDRs; and

(*c*) the transferee or the new company files a report within 30 days with the Reserve Bank giving full details of the shares held by persons resident outside India in the transferor and the transferee or the new company, before and after the merger/amalgamation/reconstruction, and also furnishes a confirmation that all the terms and conditions stipulated in the scheme approved by the Court have been complied with.

[5][(2) Where a Scheme of Arrangement for an Indian company has been approved by a Court in India, the Indian company may issue non-convertible redeemable preference shares or debentures out of its general reserves by way of distribution as bonus to the shareholders resident outside India, subject to the following conditions, namely:

(*a*) the original acquisition of shares/convertible debentures (including non-convertible/optionally convertible/partially convertible preference shares issued as on and up to April 30, 2007 and

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Prior to its substitution, regulation 6B read as under:
"6B. *Report to RBI.*—A company issuing right shares or bonus shares in terms of regulation 6 or regulation 6A as the case may be, shall, within thirty days from the date of issue, report the transaction in Form FC-GPR to the Regional Office of the Reserve Bank of India under whose jurisdiction in the Registered Office of the company is situated."
3. Substituted for "rights shares or bonus shares" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
4. Inserted, *ibid.*
5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifteenth Amendment) Regulations, 2013, w.e.f. 31-12-2013.

optionally convertible/partially convertible debentures issued up to June 7, 2007 under Foreign Direct Investment Scheme and treated as eligible (FDI) compliant instruments under the then applicable guidelines) of the Indian company by non-resident shareholders entitling them to hold non-convertible redeemable preference shares or debentures is in accordance with these Regulations and the conditions specified in the relevant Schedule;

(*b*) in accordance with the provisions of the Companies Act, as applicable and the terms and conditions, if any, stipulated in the scheme approved by the Court in India have been complied with;

(*c*) the Indian company or transferee company or a new company has a 'No objection certificate' from Income-tax authority ; and

(*d*) the Indian company shall not engage in any activity/sector mentioned in Annex A to Schedule 1 to these Regulations.]

Issue of shares under Employees Stock Options Scheme to persons resident outside India.

8. (1) An Indian company may issue shares under the Employees' Stock Options Scheme, by whatever name called, to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust :

Provided that

(*a*) the scheme has been drawn in terms of regulations issued under the Securities and Exchange Board of India Act, 1992; and

(*b*) face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

(2) The Trust and the issuing company shall ensure that value of shares held by persons resident outside India under the scheme does not exceed the limit specified in clause (*b*) of sub-regulation (1).

(3) The issuing company shall furnish to the Reserve Bank, within thirty days from the date of issue of shares under the scheme, a report giving the following particulars/documents,—

(*i*) names of persons to whom shares are issued under the scheme and number of shares issued to each of them;

(*ii*) a certificate from the Company Secretary of the issuing company that the value of shares issued under the scheme does not exceed 5 per cent of the paid-up capital of the issuing company and that the shares are issued in compliance with the regulations issued by the SEBI in this behalf.

Transfer of [1][*shares or convertible debentures or warrants*] of an Indian company by a person resident outside India.

9. (1) Subject to the provisions of sub-regulation (2), a person resident outside India holding the [2][*shares or convertible debentures or warrants*] of an Indian company in accordance with these Regulations, may transfer the [2][*shares or convertible debentures or warrants*] so held by him, in compliance with the conditions specified in the relevant Schedule of these regulations.

[3][Further, subject to minimum lock-in period of one year or minimum lock-in period as prescribed under Annex B of Schedule 1 whichever is higher, a person resident outside India holding the [2][*shares or convertible debentures or warrants*] of an Indian company containing an optionality clause in accordance with these Regulations and exercising the option/right, may exit without any assured return, subject to the following conditions:

(*i*) In case of listed company, at the [4][*market price prevailing on the floor of the recognised stock exchanges*];

1. Substituted for "shares and convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
2. Substituted for "shares or debentures", *ibid.*
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventeenth Amendment) Regulations, 2013, w.e.f. 12-11-2013.
4. Substituted for "market price determined on the floor of the recognised stock exchanges" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014, w.e.f. 8-7-2014.

[1][(ii) *In case of equity shares, preference shares or debentures of unlisted company, at a price not exceeding that arrived at as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreements and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement.*]]

[2][(2)(*i*) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale or gift the [3][*shares or convertible debentures or warrants*] held by him or it to any person resident outside India;

(*ii*) A non-resident Indian [4][***] may transfer by way of sale or gift, the [3][*shares or convertible debentures or warrants*] held by him or it to another non-resident Indian [5][***] only;

[6][***]

(*iii*) A person resident outside India holding the [3][*shares or convertible debentures or warrants*] of an Indian company in accordance with these Regulations,

(*a*) may transfer the same to a person resident in India by way of gift;

(*b*) may sell the same on a recognized Stock Exchange in India through a registered broker.]

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014, w.e.f. **8-7-2014**. Prior to their substitution, clauses (*ii*) and (*iii*) read as under:

   "(*ii*) In case of equity shares of unlisted company, at a price not exceeding that arrived on the basis of Return on Equity (RoE) as per latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy.

   Explanation.—RoE shall mean Profit After Tax/Net Worth; Net worth would include all free reserves and paid-up capital;

   (*iii*) In case of preference shares or debentures, at a price worked out as per any internationally accepted pricing methodology at the time of exit, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreements and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement."

2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003. Prior to substitution, sub-regulation (2) read as under:

   "(2)(*i*) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale, the shares or convertible debentures held by him to any person resident outside India:

   Provided that the person to whom the shares are being transferred has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

   (*ii*) A non-resident Indian or an overseas corporate body may transfer by way of sale, the shares or convertible debentures held by him or it to another non-resident Indian or an overseas corporate body only.

   (*iii*) A person resident outside India may transfer any security held by him, to a person resident in India by way of gift."

3. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.

4. Words "or an overseas corporate body" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.

5. Words "or Overseas Corporate Body" omitted, *ibid.*

6. Provisos omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012, w.r.e.f. 31-3-2011. Prior to their omission, the said provisos read as under:

   "**Provided** that the person to whom the shares are being transferred, in terms of clauses (*i*) and (*ii*), has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged:

   Provided further that the restriction in clauses (*i*) and (ii) shall not apply to the transfer of shares to International Financial Institutions such as Asian Development Bank (ADB), International Finance Corporation (IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gesselschaft (DEG) and transfer of shares of an Indian company engaged in Information Technology sector;"

[1][Permission] of Reserve Bank in certain cases for transfer of security.

10. A. TRANSFER BY WAY OF GIFT OR SALE BY A PERSON RESIDENT IN INDIA

A person resident in India who proposes to transfer to a person resident outside India [2][not being erstwhile OCBs] :—

[3][(a) (i) any security, by way of gift, shall make an application to the Reserve Bank for its approval.

(ii) The Reserve Bank may grant such approval on being satisfied of the following conditions :

(a) The donee is eligible to hold such a security under Schedules 1, 4 and 5 of these Regulations.

(b) The gift does not exceed 5 per cent of the paid up capital of the Indian company/ each series of debentures/each mutual fund scheme.

(c) The applicable sectoral cap/foreign direct investment limit in the Indian company is not breached.

(d) The donor and the donee are relatives as defined in section 6 of the Companies Act, 1956.

[4][(e) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of US $ 50,000.]

(f) Such other conditions as considered necessary in public interest by the Reserve Bank.

(iii) The application for approval referred to in sub-clause (i) shall contain the following information/documents :

(a) Name and address of the donor and the donee.

(b) Relationship between the donor and the donee.

(c) Reasons for making the gift.

(d) In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such securities.

(e) In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.

[5][(f) *In case of shares or convertible debentures or warrants, a certificate from a Chartered Accountant or Merchant Banker registered with Securities & Exchange Board of India (SEBI) on the value of such securities according to the pricing guidelines stipulated by the Reserve Bank from time to time.*]

1. Substituted for 'Prior permission' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 4-11-2011.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005, w.r.e.f. 4-10-2004.
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2005, w.e.f. 22-7-2005. Prior to its substitution, it read as under :
   '(a) any security, by way of gift, shall make an application to the Reserve Bank furnishing the following information, namely :
   (i) Name and address of the transferor and the proposed transferee
   (ii) Relationship between the transferor and the proposed transferee
   (iii) Reasons for making the gift;'
4. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2012, w.r.e.f. 15-9-2011. Prior to its substitution, sub-clause (e) read as under :
   '(e) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of US $ 25,000.'
5. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**. Prior to its substitution, sub-clause (f) read as under :
   '(f) In case of shares and debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by the Securities and Exchange Board of India or the erstwhile CCI with regard to listed companies and unlisted companies respectively.'

(*g*) Certificate from the concerned Indian company certifying that the proposed transfer of [1][*shares or convertible debentures or warrants*], by way of gift, from resident to the non-resident shall not breach the applicable sectoral cap/FDI limit in the company and that the proposed number of [1][*shares or convertible debentures or warrants*] to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company;]

[2][(*h*) *A declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof.*]

[3][(*b*) any [4][*shares or convertible debentures or warrants*] of an Indian company under the Foreign Direct Investment Scheme, whose activities fall under Annex B to Schedule 1, shall, subject to sectoral limits specified therein, transfer such [4][*shares or convertible debentures or warrants*] without prior approval of the Reserve Bank if the same is by way of sale, subject to the following:

(*i*) that the parties concerned adhere to the pricing guidelines, documentation and reporting requirements for such transfers, stipulated by the Reserve Bank from time to time.

(*ii*) where the transfer of [4][*shares or convertible debentures or warrants*] requires the prior approval of the Foreign Investment Promotion Board (FIPB) as per the extant Foreign Direct Investment (FDI) policy:

(*a*) the requisite approval of the FIPB has been obtained; and

(*b*) the transfer of [4][*shares or convertible debentures or warrants*] adheres with the pricing guidelines and documentation, reporting requirements as stipulated by the Reserve Bank from time to time.

(*iii*) where SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 are attracted, the pricing guidelines and documentation, reporting requirements as stipulated by SEBI are complied with:

Provided howsoever that in case the SEBI guidelines as aforesaid are not complied with for the purposes of this Regulation, compliance with pricing guidelines, reporting and documentation requirements as stipulated by RBI shall be sufficient.

(*iv*) where the pricing guidelines under the Foreign Exchange Management Act, (FEMA) 1999 are not complied with—

(*a*) The resultant FDI is in compliance with the requirements of Schedule 1, other than pricing guidelines; and

(*b*) The pricing for the transaction is compliant with the applicable SEBI regulations/guidelines; and

(*c*) Chartered Accountants Certificate to the effect that compliance with the applicable SEBI regulations/guidelines as indicated above is attached to the Form FC-TRS to be filed with the AD bank.

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1. Substituted for "shares/convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
2. Inserted, *ibid.*
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 4-11-2011. Prior to its substitution, sub-clause (*b*), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005, w.r.e.f. 4-10-2004, read as under:

   "(*b*) any share/convertible debenture of an Indian Company whose activities fall under Annexure B to Schedule I, other than item Nos. 1, 2 and 3 and subject to the Sectoral Limits specified therein, shall transfer such shares/debentures without prior approval of Government and RBI, if the same is by way of sale subject to the following :

   (*i*) that the Indian Company whose shares or convertible debentures are proposed to be transferred is not engaged in rendering any financial service;

   (*ii*) that the transfer does not fall within the purview of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; and

   (*iii*) that the concerned parties adhere to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by Reserve Bank, from time to time;"
4. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.

(*v*) where the investee company is in the financial services sector:

(*a*) [1][***]

(*b*) The requirements of Schedule 1 are complied with.

Explanation : For the purpose of this Regulation, "financial services", shall mean service rendered by banking and non-banking companies regulated by the Reserve Bank, insurance companies regulated by Insurance Regulatory and Development Authority (IRDA), pension funds regulated by the Pension Fund Regulatory and Development Authority, other companies regulated by any other financial regulator and such other services as may be directed by Reserve Bank from time to time,]

[2][(*c*) any [3][*shares or convertible debentures or warrants*] by way of sale, shall make an application to the Reserve Bank for its approval if:

(*i*) the transfer is to take place at a price which is not in conformity with the pricing guidelines stipulated by either the Reserve Bank or the SEBI, or

(*ii*) it is not covered by clause (*b*) above.]

[4][(*d*) any [3][*shares or convertible debentures or warrants*] by way of sale, shall make an application to the Reserve Bank for its approval if the non-resident acquirer proposes deferment of payment of the amount of consideration.]

[5][*Explanation.*—For the purpose of this Regulation, "financial services" shall mean service rendered by banking and non-banking companies regulated by the Reserve Bank, insurance companies regulated by Insurance Regulatory and Development Authority (IRDA) and other companies regulated by any other financial regulator as the case may be.]

B. TRANSFER BY WAY OF SALE NOT COVERED BY REGULATION 9 BY A PERSON RESIDENT OUTSIDE INDIA

(*1*) [6][***]

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2013, w.e.f. 4-10-2013. Prior to its omission, clause (*a*) read as under :

 "(*a*) No Objection Certificates (NOCs) are obtained from the respective financial sector regulators/regulators of the investee company as well as transferor and transferee entities and such NOCs are filed along with the Form FC-TRS with the AD bank; and"

2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 4-11-2011. Prior to its substitution, sub-clause (*c*), as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 10-2-2006, read as under:

 '(*c*) any security by way of sale, shall make an application to the Reserve Bank for its approval if,

 (*i*) the activity of the Indian company, whose securities are being transferred, falls outside the Automatic Route, and the approval of the FIPB has been obtained for the said transfer;

 (*ii*) the activity of the Indian company whose securities are being transferred, falls under the financial services sector;

 (*iii*) the transfer falls within the purview of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; and

 (*iv*) the transfer is to take place at a price which falls outside the pricing guidelines specified by Reserve Bank, from time to time.'

3. Substituted for 'shares or convertible debentures' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.

4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 22-4-2009.

5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005, w.r.e.f. 4-10-2004.

6. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005, w.r.e.f. 4-10-2004. Prior to its omission, clause (*1*) read as under :

 "(*1*) Transfer by way of sale not covered by Regulation 9 by a person resident outside India of the shares, convertible debentures held by him to a person resident in India, shall require prior permission of the Reserve Bank, for which application in Form TS 1 may be made to the Reserve Bank."

[1][(2) A person resident outside India, may transfer [2][*shares or convertible debentures or warrants*] of an Indian Company, without the prior permission of the Reserve Bank, by way of sale, to a person resident in India subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by Reserve Bank from time to time.]

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2005, w.r.e.f. 4-10-2004. Prior to its substitution, clause (*2*) read as under:

"(*2*) While considering the grant of permission, the Reserve Bank shall take into account the following factors, namely,—

(*a*) where the shares of an Indian company are traded on stock exchange,

(*i*) the sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock exchange;

(*ii*) if the transfer is other than that referred to in clause (*i*), the Reserve Bank will satisfy itself that the shares are proposed to be sold at a price arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 per cent variation. Where, however, the shares are being sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the object of passing management-control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by upto a ceiling of 25 per cent over the price arrived at as above,

(*b*) where the shares of an Indian company are not listed on stock exchange or are thinly traded,

(*i*) if the consideration payable for the transfer does not exceed Rs. 20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares, and

(*ii*) if the amount of consideration payable for the transfer exceeds Rs. 20 lakhs per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:

(*A*) a price based on earning per share (EPS) linked to the Price Earning (P/E) multiple, or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher,

or

(*B*) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen-based trading system,

(*c*) where the shares are not listed on any stock exchange, at a price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a Merchant Banker in Category I registered with Securities and Exchange Board of India.

Explanation :

(*i*) A share is considered as thinly traded if the annualised trading turnover in that share, on main stock exchanges in India, during the six calendar months preceding the month in which application is made, is less than 2 per cent (by number of shares) of the listed stock.

(*ii*) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares issued and paid-up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares issued and paid-up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.

(*iii*) For computing the price based on Earning Per Share, the earning per share as per the latest balance sheet of the company shall be used in conjunction with the average Price Earning Multiple of Bombay Stock Exchange National Index for the calendar month preceding the month in which application is made and Price Earning shall be discounted by 40 per cent."

2. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.

[1][(3) Where pricing guidelines under the Foreign Exchange Management Act (FEMA), 1999 are not complied with, a person resident outside India, may transfer [2][*shares or convertible debentures or warrants*] of an Indian Company, by way of sale, to a person resident in India, without the prior permission of the Reserve Bank, subject to the following:

(*a*) The original and resultant investment are in conformity with the requirements of Schedule 1, other than pricing guidelines; and

(*b*) The pricing for the transaction is compliant with the applicable SEBI regulations/guidelines; and

(*c*) Chartered Accountants Certificate to the effect that compliance with the applicable SEBI regulations/guidelines as indicated above is attached to the Form FC-TRS to be filed with the AD bank.]

[3][*C.* A person resident outside India may open an Escrow account with an authorized dealer bank in Indian Rupees in India, subject to the terms and conditions as specified in the Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time for acquisition of [2][*shares or convertible debentures or warrants*] through open offers/delisting/exit offers, subject to compliance with the relevant SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended from time to time. Such Escrow account may be funded by way of inward remittance through normal banking channel and/or by way of guarantee issued by an authorized dealer bank, subject to terms and conditions as specified in the Foreign Exchange Management (Guarantees) Regulations, as amended from time to time.]

[4][*D.* A non-resident including Non-Resident Indian may acquire shares of a listed Indian company on the recognised stock exchange through a registered broker under FDI Scheme provided that :

(*a*) The non-resident investor has already acquired the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations and continues to hold such control;

(*b*) The amount of consideration for purchase of shares on the recognised stock exchange for transfer to non-residents may be paid as specified in para 8 of Schedule 1 to Notification No. FEMA 20/2000-RB, dated 3rd May, 2000 or out of the dividend payable by Indian investee company in which the non-resident has acquired and continues to hold the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, provided the right to receive dividend is established and the dividend amount has been credited to specially designated non-interest bearing rupee account for acquisition of shares on the recognised stock exchange.]

Remittance of sale proceeds.

11. (1) No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these Regulations and the conditions specified in the relevant Schedule.

(2) An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India :

Provided—

(*a*) the security was held by the seller on repatriation basis;

(*b*) either the security has been sold on a recognised stock exchange in India through a stock broker at the ruling market price as determined on the floor of the exchange, or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof; and

(*c*) a no objection/tax clearance certificate from the income-tax authority has been produced.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 4-11-2011.
2. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2013, w.e.f. 5-3-2013.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2013, w.e.f. 10-7-2013.

[1][**Pledge of shares of company incorporated in India**

12. (*i*) Any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing (ECB) raised by the borrowing company:

Provided that no person shall pledge any such share unless no-objection has been obtained from a bank which is an authorised dealer.

(*ii*) A bank which is an authorised dealer may grant 'no objection' for pledge of shares under clause (*i*) after satisfying itself of the following:

(*a*) the underlying ECB is strictly in compliance with the extant ECB guidelines,

(*b*) the loan agreement has been signed by both the lender and the borrower,

(*c*) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and

(*d*) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank : (Amendment) Rules, 2009 :

Provided that the 'no objection' may be granted by a bank which is an authorised dealer subject to the following conditions, namely:—

(*a*) the period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;

(*b*) in case of invocation of pledge, transfer shall be in accordance with the extant FDI policy and directions issued by the Reserve Bank;

(*c*) the Statutory Auditor has certified that the borrowing company will utilise/has utilised the proceeds of the external commercial borrowing for the permitted end-use/s only.]

[2][(*iii*) Any person being a non-resident investor of a company registered in India (resident investee company) may pledge the shares or convertible debentures of that company to a bank in India to secure the credit facilities being extended to that company for bona fide purposes, subject to the AD bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank, from time to time, in this regard.

(*iv*) Any person being a non-resident investor of a company registered in India (resident investee company) may pledge the shares or convertible debentures of that company to an overseas bank to secure the credit facilities being extended to the non-resident investor or non-resident promoter of the resident investee company or its overseas group company subject to the AD bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank from time to time in this regard.]

[3][(*v*) Any person being a non-resident investor of a company registered in India and listed on a recognised stock exchange/s in India (resident investee company), may pledge the shares of that company, in favour of a Non-Banking Financial Company in India, to secure the credit facilities being extended to that resident investee company for bona fide business purposes, subject to the AD bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank, from time to time, in this regard.]

[4][**Issue of Indian Depository Receipts.**

13. An eligible company resident outside India may issue IDRs through a Domestic Depository, to persons resident in India and outside India, subject to the terms and conditions specified in Para 1 of Schedule 7.]

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2009, w.r.e.f. 11-7-2008.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 2-5-2011.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2014, w.e.f. 30-5-2014.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.

[1][Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies

14. ***Definition :*** For the purpose of this regulation,

1. (*i*) Ownership and control shall mean

(*a*) Company "Owned by resident Indian citizens" shall be an Indian company if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens; [2][***]

(*b*) Company "Owned by non-residents" means an Indian company where more than 50% of the capital in it is beneficially owned by non-residents; [3][***]

[4][(*ia*) "Control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.]

(*ii*) "Direct foreign investment" shall mean investment received by an Indian Company from non-resident entities regardless of whether the said investments have been made under [5][Schedules 1, 2, 2A, 3, 6 and 8] of the Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time;

(*iii*) "Downstream investment" means indirect foreign investment, by one Indian company into another Indian company, by way of subscription or acquisition;

(*iv*) "Holding Company" would have the same meaning as defined in Companies Act, 1956;

(*v*) "Indirect foreign investment" means entire investment in other Indian companies by an Indian company (IC), having foreign investment in it provided (*a*) IC is not "owned and controlled" by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens or (*b*) where the IC is owned or controlled by non-residents.

However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-*cum*-investing/investing companies will be limited to the foreign investment in the operating-*cum*-investing/investing company.

(*vi*) "Investing Company" means an Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings/securities;

(*vii*) "Non-Resident Entity" means "person resident outside India" [as defined at section 2(*w*) of FEMA, 1999];

(*viii*) "Resident Entity" means "person resident in India" [as defined at section 2(*v*) of FEMA, 1999] excluding an individual;

(*ix*) "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, 1955.

(*x*) "Total foreign investment" in an Indian Company would be the sum total of direct and indirect foreign investment.

2. Investment in Indian companies can be made by both 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 both resident and non-resident investments. Thus

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2013, w.r.e.f. 13-2-2009.
2. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Twelfth Amendment) Regulations, 2013, w.r.e.f. 22-8-2013. Prior to its omission, it read as under :
   'Company shall be considered "Controlled" by resident Indian citizens if the residents Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company;'
3. Omitted, *ibid.* Prior to its omission, it read as under :
   'Company "Controlled" by non-residents means an Indian company where non-residents have the power to appoint a majority of its directors in that company;'
4. Inserted, *ibid.*
5. Substituted for "Schedules 1, 2, 3, 6 and 8" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 13-3-2014.

such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be through multi-layered structure.

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

3. (*i*) ***Counting of direct foreign investment :*** All investments made directly by non-resident entities into the Indian company would be counted towards "Direct foreign investment".

(*ii*) ***Counting of indirect foreign investment :*** The entire indirect foreign investment by the investing company into the other Indian Company would be considered as indirect foreign investment for the purpose of computation of indirect foreign investment. However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-*cum*-investing/investing companies will be limited to the foreign investment in the operating-*cum*-investing/ investing company. This exception has been 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. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

(*iii*) The methodology for calculation of total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.

(*iv*) ***Additional requirements***

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

(*B*) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter se* agreements between/amongst shareholders 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 such *inter se* agreements for determining ownership and control when considering the case for approval of foreign investment.

(*C*) 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.

(*D*) In the I&B [1][***] 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 :

- (*a*) 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:
  - (*aa*) In the case of an individual shareholder,
    - (*aai*) The individual shareholder.
    - (*aaii*) A relative of the shareholder within the meaning of section 6 of the Companies Act, 1956.
    - (*aaiii*) A company/group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
  - (*ab*) In the case of an Indian company,
    - (*abi*) The Indian company.
    - (*abii*) A group of Indian companies under the same management and ownership control.
- (*b*) 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.

1. Words "and Defence sectors" omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2014, w.r.e.f. **26-8-2014**.

(c) Provided that, in case of a combination of all or any of the entities mentioned in sub-clauses (aa) and (ab) 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.

(E) 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.

4. The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or a rule thereunder. The above methodology of determining direct and indirect foreign investment therefore does not apply to the insurance sector which will continue to be governed by the relevant Regulation.

Guidelines for establishment of Indian companies/transfer of ownership or control of Indian companies, from resident Indian citizens and Indian companies to non-resident entities, in sectors with caps.

5. In sectors/activities with caps, including, *inter alia*, defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites. Government approval/FIPB approval would be required in all cases where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition, etc. or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition, etc. or

(v) It is clarified that these guidelines will not apply to sectors/activities where there are no foreign investment caps, that is, where 100% foreign investment is permitted under the automatic route.

(vi) For the purpose of computation of indirect foreign investment, foreign investment shall include all types of direct foreign investments in the Indian company making downstream investment. For this purpose portfolio investments either by [1][FIIs, NRIs, QFIs or RFPIs] holding as on March 31 of the previous year would be taken into account, *e.g.* for monitoring foreign investment for the financial year 2011-12, investment as on March 31, 2011 would be taken into account. Besides, investments in the form of Foreign Direct Investment, Foreign Venture Capital Investment, ADRs/GDRs, Foreign Currency Convertible Bonds (FCCB) will also be taken into account. Thus, regardless of the investments having been made under [2][Schedules 1, 2, 2A, 3, 6 and 8], the same will be taken into account.

Downstream investment by an Indian company which is not owned and/or controlled by resident entity/ies.

6. (i) Downstream investment by an Indian company, which is not owned and/or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

> **Note** : *With effect from 31st day of July, 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 owned and/or controlled by non-residents/a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring

1. Substituted for "FIIs, NRIs or QFIs" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Substituted for "Schedules 1, 2, 3, 6 and 8", *ibid.*

[1][**Provided** that the [2][*shares or convertible debentures or warrants*] are not being issued by the Indian company with a view to acquire existing shares of any Indian company. However, downstream investment by an Indian company receiving Foreign Direct Investment would be permitted to the extent specified in Regulation 14.]

Explanation.—A company which proposes to embark on expansion programme to undertake activities or manufacture items included in Annex B to this Schedule may issue [3][*shares or convertible debentures or warrants*] out of fresh capital proposed to be issued by it for the purpose of financing expansion programme, up to the extent indicated in Annex B, subject to compliance with the provisions of this paragraph.]

[4][(2) A company which is an Micro and Small Enterprise (MSE) (earlier Small Scale Industrial Unit) including an Export Oriented Unit or a Unit in a Free Trade Zone or in an Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park, and which is not engaged in any activity/sector mentioned in Annex A to this Schedule may issue [2][*shares or convertible debentures or warrants*] to a person resident outside India referred to in paragraph 1, subject to the limits prescribed in Annex B to this Schedule, in accordance with the Entry Routes specified therein and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.]

[5][(3) Any Industrial undertaking, with or without Foreign Direct Investment, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act,

(Contd. from p. 3.137)

Industrial Policy and Procedures as notified by Secretariat for Industrial Assistance (SIA) in the Ministry of Commerce and Industry, Govt. of India, from time to time :

Provided that

(*i*) the activity of the issuer company does not require an industrial licence under the provisions of the Industries (Development & Regulation) Act, 1951 or under the locational policy notified by Government of India under the Industrial Policy of 1991 as amended from time to time;

(*ii*) the shares or convertible debentures are not being issued by the Indian company with a view to acquiring existing shares of any Indian company.

Explanation : A company which proposes to embark on expansion programme to undertake activities or manufacture items included in Annexure B to this Schedule may issue shares or debentures out of fresh capital proposed to be issued by it for the purpose of financing expansion programme, upto the extent indicated in Annexure B, subject to compliance with the provisions of this paragraph."

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2013, w.r.e.f. 13-2-2009. Prior to its substitution, proviso read as under :

"Provided that the shares or convertible debentures are not being issued by the Indian company with a view to acquire existing shares of any Indian company."

2. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
3. Substituted for "shares or debentures", *ibid.*
4. Reintroduced by the FEM (Transfer or Issue of Security by a Person Resident outside India) *(Fourth Amendment) Regulations, 2012, w.r.e.f. 27-2-2009. Prior to its insertion, sub-paragraph (2) was omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008, read as under:

"(2) A company which is a small scale industrial unit and which is not engaged in any activity or in manufacture of items included in Annexure A, may issue shares or convertible debentures to a person referred to in paragraph 1, to the extent of 24% of its paid-up capital:

Provided that such a company may issue shares in excess of 24% of its paid-up capital if—

(*a*) it has given up its small scale status;

(*b*) it is not engaged or does not propose to engage in manufacture of items reserved for small scale sector; and

(*c*) it complies with the ceilings specified in Annexure B."

*As corrected by Corrigendum No. GSR 624(E), dated 10-9-2013.

5. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2012, w.r.e.f. 27-2-2009. Prior to its substitution, sub-paragraph (3), was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008, read as under:

"(3) Notwithstanding anything contained in clause (3) an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park may issue shares or convertible debentures to a person resident outside India referred to in paragraph 1 in excess of 24 per cent provided it complies with the ceilings specified in Annexure B."

1951 for manufacturing items reserved for manufacture in the MSE sector may issue [1][*shares or convertible debentures or warrants*] to persons resident outside India referred to in paragraph 1, to the extent of 24 per cent of its paid-up capital. Issue of [1][*shares or convertible debentures or warrants*] in excess of 24 per cent of paid-up capital shall require prior approval of the Foreign Investment Promotion Board of the Government of India and shall be in compliance with the terms and conditions of such approval.]

[2][*Explanation.*—For the purposes of sub-paragraphs (2) and (3) above, in terms of the provisions of the Micro, Small and Medium Enterprises Development Act, (*i*) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, a micro enterprise means where the investment in plant and machinery does not exceed twenty five lakh rupees; a small enterprise means where the investment in plant and machinery is more than twenty five lakh rupees but does not exceed five crore rupees; (*ii*) in the case of the enterprises engaged in providing or rendering services, a micro enterprise means where the investment in equipment does not exceed ten lakh rupees; a small enterprise means where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees.]

[3][[4][(4)] An Indian company, otherwise eligible to issue shares under this Schedule may issue equity/preference shares, subject to pricing guidelines as given in paragraph 5 of this Schedule, to a person resident outside India,

(*i*) being a provider of technology/technical know-how, against Royalty/Lump sum fees due for payment;

(*ii*) against External Commercial Borrowing (ECB) (other than import dues deemed as ECB or Trade Credit as per RBI Guidelines);

[5][(*iii*) against import of capital goods by units in SEZs, subject to the valuation by a Committee consisting of Development Commissioner and the appropriate Customs officials;]

[6][*(iv) against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/regulations framed or directions issued thereunder, provided that:*

(i) The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve Bank of India, from time to time;

(ii) The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.]

Provided that the foreign equity in the company after the conversion of Royalty/Lump sum fee/ECB into equity is within the sectoral cap notified, if any.]

1. Substituted for "shares" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) *(Fourth Amendment) Regulations, 2012, w.r.e.f. 27-2-2009.
   *As corrected by Corrigendum No. GSR 624(E), dated 10-9-2013.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2004, w.e.f. 1-10-2004.
4. Sub-paragraph (5) renumbered as (4) by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.
5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012, w.r.e.f. 1-4-2003.
6. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Twelfth Amendment) Regulations, 2014, w.e.f. 2-9-2014.

[1][Issue of shares by a company requiring the Government approval.

[2][3. An Indian company intending to issue shares to a person resident outside India in accordance with these regulations directly against foreign inward remittance (or by debit to NRE account/ FCNR account) or against consideration other than inward remittance *i.e.*, against royalty/lump sum fee due for payment/import of capital goods by units in SEZs/ECBs (excluding those deemed as ECBs) shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian Company:

(*a*) is engaged or proposes to engage, in any activity specified in Annex A to this Schedule; or

(*b*) proposes to issue shares to a person resident outside India beyond sectoral limits or the activity of the Indian company falls under the FIPB route, as stipulated in Annex B to this Schedule; or

(*c*) proposes to issue shares to a person resident outside India against shares swap* *i.e.* in lieu of consideration to be paid for shares acquired in the overseas company; or

(*d*) proposes to issue shares to a person resident outside India against import of capital goods/ machinery/equipment [3][(excluding second-hand machinery)] subject to compliance with the conditions specified by the Government of India and the Reserve Bank from time to time; or

(*e*) proposes to issue shares to a person resident outside India against pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the conditions specified by the Government of India and the Reserve Bank from time to time.]]

Issue of Shares by International offering through ADR and/or GDR.

4. (1) An Indian company may issue its rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/or American Depository Receipts (ADRs):

Provided the Indian company issuing such shares—

(*a*) has an approval from the Ministry of Finance, Government of India to issue such ADRs and/ or GDRs or is eligible to issue ADRs/GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and

(*b*) is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations, and

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 29-11-2003 [This amendment is given retrospective effect from November 29, 2003, that is, from the date on which Press Note 5 (2003 Series) was issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India]. Prior to its substitution, sub-paragraph (3) as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2004, w.e.f. 1-10-2004.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012, w.r.e.f. 31-3-2011, read as under:

   '3. An Indian company intending to issue shares to a person resident outside India in accordance with these Regulations shall obtain prior approval of the Foreign Investment Promotion Board of Government of India if the company:

   (*a*) is engaged or proposes to engage, in any activity given in Annex A(A) to this Schedule; or

   (*b*) falls under the FIPB route as stipulated under the column "Entry Route" in Annex B to this Schedule; or

   (*c*) proposes to issue shares to a person resident outside India against considerations other than inward remittance *i.e.*, against royalty/lump sum fee due for payment; or

   (*d*) proposes to issue shares to a person resident outside India, on or after November 28, 2003, against External Commercial Borrowings (ECBs) [excluding those deemed as ECBs] received in convertible foreign currency.'
3. Substituted for "including second-hand machinery" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 10-4-2012.

* This amendment is given retrospective effect from 6th day of December, 2003 that is from the date of issuance of A.P. (DIR Series) Circular No. 41 issued by the Reserve Bank of India.

(*c*) the ADRs/GDRs are issued in accordance with the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government thereunder from time to time.

(2) The Indian company issuing shares under sub-paragraph (1), shall furnish to the Reserve Bank, full details of such issue in the [1][Form DR], within 30 days from the date of closing of the issue.

(3) The Indian company issuing shares against ADRs/GDRs shall furnish a quarterly return in the [2][Form DR-Quarterly] to Reserve Bank within fifteen days of the close of the calendar quarter.

(4) Pending repatriation or utilisation of foreign exchange resources raised in terms of clause (1) the Indian company may invest the foreign currency funds in—

[3][(*a*) deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch, IBCA or Moody's etc.; and such rating not being less than the rating stipulated by Reserve Bank from time to time for the purpose,]

(*b*) deposits with branch outside India of an authorised dealer in India, and

(*c*) treasury bills and other monetary instruments with a maturity or unexpired maturity of the instrument of one year or less.

[4][**4A.** A registered broker in India may purchase shares of an Indian Company on behalf of a person resident outside India, for the purpose of converting the shares so purchased into ADRs/GDRs :

Provided that—

(*i*) the shares are purchased on a recognized stock exchange;

(*ii*) the Indian company has issued ADRs/GDRs;

(*iii*) the shares are purchased with the permission of Custodian of the ADRs/GDRs of the concerned Indian company and are deposited with the Custodian;

(*iv*) the number of shares so purchased shall not exceed ADRs/GDRs converted into underlying shares and shall be subject to sectoral caps as applicable;

(*v*) the non-resident investor, broker, Custodian and the overseas depository comply with the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued thereunder by the Central Government from time to time.

[5][**4B.** An Indian company may sponsor an issue of ADRs/GDRs with an overseas depository against shares held by its shareholders at a price to be determined under the provisions of the

1. Substituted for "form specified in Annexure 'C'" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.
2. Substituted for "form specified in Annexure 'D'", *ibid.*
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India)(Third Amendment) Regulations, 2004, w.e.f. 16-6-2004. Prior to its substitution, it read as under :
   "(*a*) deposits with or Certificate of Deposits or other instruments of banks who have been rated not less than A1+ by Standard and Poor or P1 by Moody's for short term obligations."
4. Paragraphs 4A and 4B inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2001, w.e.f. 2-3-2001.
5. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Prior to its substitution, paragraph 4B, read as under:
   "4B. (*i*) An Indian company may sponsor an issue of ADRs/GDRs with an overseas depository against shares held by its shareholders at a price to be determined by the Lead Manager;
   (*ii*) The proceeds of the issue shall be repatriated to India within a period of one month;
   (*iii*) The sponsoring company shall comply with the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued thereunder by the Central Government from time to time;
   (*iv*) The sponsoring company shall furnish full details of such issue in a form specified in Annexure C to the Foreign Investment Division, Exchange Control Department, Reserve Bank of India, Central Office, Mumbai within 30 days from the date of closure of the issue."

Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and the reporting requirements as directed by Reserve Bank, from time to time.]]

[1][**Issue price**

5. Price of shares issued to persons resident outside India under this Schedule, shall not be less than :—

(*a*) the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognized stock exchange in India;

[2][(*b*) *the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognised stock exchange in India*;]

(*c*) [3][***]]

5A. [4][***]

[5][**5B.** Notwithstanding anything contained in paragraph 5 above, where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 1956, by way of subscription to Memorandum of Association, such investments may be made at face value subject to eligibility to invest under this Schedule.]

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2010, w.e.f. 7-4-2010. Prior to its substitution, paragraph 5, read as under:

   "5. *Issue price*.—Price of shares issued to persons resident outside India under this Schedule, shall not be less than—

   (*a*) the price worked out in accordance with the SEBI guidelines as applicable, where the issuing company is listed on any recognised stock exchange in India, and

   (*b*) fair valuation of shares done by a chartered accountant as per the guidelines issued by the erstwhile Controller of Capital issues, in all other cases."

2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014, w.e.f. 8-7-2014. Prior to its substitution, clause (*b*) read as under :

   "(*b*) the fair valuation of shares done by a SEBI registered Category-I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognized stock exchange in India; and"

3. Omitted, *ibid.* Prior to its omission, clause (*c*) read as under :

   "(*c*) the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment."

4. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Prior to its omission, paragraph 5A as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 13-6-2003, read as under:

   "5A. *Issue price of ADRs/GDRs*.—Price of ADRs/GDRs to be issued to a person resident outside India may be decided by the Indian company—

   (*a*) where the issue is on public offer basis, in consultation with the Lead Manager to the issue; and

   (*b*) in other cases, as provided in paragraph 5 above."

5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 26-9-2012.

[1][**Issue price of ADRs/GDRs.**

6. The pricing of ADRs/GDRs to be issued to a person resident outside India shall be determined under the provisions of the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India from time to time.]

Rate of Dividend on Preference Shares.

7. The rate of dividend on preference shares or convertible preference shares issued under these Regulations shall not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the company in which issue of such shares is recommended.

[2][**Mode of payment for shares issued to person resident outside India.**

8. *A company in India issuing shares or convertible debentures or warrants under this Schedule to a person resident outside India shall receive the amount of consideration for such shares or convertible debentures or warrants—*

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Prior to its substitution, paragraph 6, as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003, read as under:

   "6. *Dividend Balancing.*—Where a company is engaged in any of the industries in the consumer goods sector, specified in Annexure E, or in any other activity where the condition of dividend balancing has been stipulated in terms of the provisions of Industrial Policy and Procedures notified by Secretariat for Industrial Assistance, the cumulative outflow of foreign exchange on account of payment of dividend over a period of seven years from the date of commencement of commercial production to investors outside India shall not exceed cumulative amount of export earning of the company during those years:

   Provided that

   (*a*) the restriction under this paragraph shall not apply

   (*i*) in respect of shares held in such a company by International Finance Corporation (IFC), the Deutsche Entwicklungs Gesselschaft (DEG), the Commonwealth Development Corporation (CDC) and Asian Development Bank (ADB),

   (*ii*) to a company that has completed a period of seven years from the date of commencement of commercial production,

   (*iii*) to obligations arising out of dividends declared/remitted after 14th July, 2000 *i.e.*, the date on which condition of dividend balancing was withdrawn.

   (*b*) [***]"

2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014. Prior to its substitution, paragraph 8, as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 1-4-2003/ 2-5-2011 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2007, w.e.f. 13-11-2007, FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2004, w.e.f. 1-10-2004, read as under:

   "8. *Mode of payment for shares issued to persons resident outside India.*—A company in India issuing shares or convertible debentures under this Schedule to a person resident outside India shall receive the amount of consideration for such shares—

   (*i*) by inward remittance through normal banking channels,

   (*ii*) by debit to NRE/FCNR account of the person concerned maintained with an authorised dealer/ authorised bank, or

   (*iii*) by debit, to a non-interest bearing Escrow account (in Indian Rupees) maintained in India with an AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000.

(Contd. on p. 3.144)

[1][Explanation.—*An Indian company issuing partly paid shares shall file a report in Form FC-GPR to the extent they become paid-up.*]

[2][(2) All Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, [3][a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time].

(3) [4][***]]

[5][**Reporting of transfer of shares of Indian company.**

10. (*i*) In case of transfer of [6][*shares or convertible debentures or warrants*] of an Indian company by way of sale from a person resident in India to a person resident outside India or *vice versa*, the transferor/transferee, resident in India, shall submit to the AD bank [7][a report in the Form FC-TRS, as specified by the Reserve Bank from time to time], within 60 days from the date of receipt or payment of the amount of consideration. The onus of submission of the Form FC-TRS within the specified time shall be on the transferor/transferee, resident in India.

(*ii*) [8][***]

(*iii*) The IBD/FED/nodal branch of the AD bank shall submit a consolidated monthly statement in respect of all such transactions reported by its branches, to the Reserve Bank in the form and manner stipulated by Reserve Bank, Foreign Exchange Department, Central Office, from time to time.

(*iv*) The sale consideration in respect of [6][*shares or convertible debentures or warrants*] remitted into India through normal banking channels, shall be subjected to a KYC check by the remittance receiving AD bank at the time of receipt of funds, in case, the remittance receiving AD bank is different from the AD bank handling the transfer transaction, the KYC check shall be carried out by the remittance receiving bank and the KYC report shall be submitted by the customer to the AD bank for carrying out the transaction along with the Form FC-TRS.

(*v*) In case prior approval of the Reserve Bank is granted for transfer of shares or convertible debentures, from a resident to the non-resident on deferred payment of consideration, the same shall be reported in Form FC-TRS, duly certified by the AD bank, within 60 days from the date of receipt of the full and final amount of consideration.]

Permission for retaining share subscription money received from persons resident outside India in a foreign currency account.

[9][11.] Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, permit an Indian company issuing shares to persons resident outside India under this Schedule, to retain the subscription amount in a foreign currency account, subject to such terms and conditions as it may stipulate.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 15-3-2011.
3. Substituted for "a report titled 'Annual Return on Foreign Liabilities and Assets' in the form specified in Annex E to this Schedule" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2014, w.e.f. 12-6-2014.
4. Omitted, *ibid.* Prior to its omission, sub-paragraph (3) read as under :
   '(3) Reserve Bank may, by notification, modify from time to time, the format of report titled "Annual Return on Foreign Liabilities and Assets" specified in Annex E to this Schedule.'
5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 22-4-2009.
6. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
7. Substituted for "a report in the Form FC-TRS specified in Annex F to this Schedule' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2013, w.e.f. 28-5-2013.
8. Omitted, *ibid.* Prior to its omission, sub-paragraph (*ii*) read as under :
   "(*ii*) Reserve Bank may, by notification, modify from time to time the Form FC-TRS specified in Annex F to this Schedule."
9. Existing paragraph 10 renumbered as paragraph 11 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012.

[1][ANNEX A
SECTORS PROHIBITED FOR FDI

FDI is prohibited in:

(a) *Lottery Business including Government/private lottery, online lotteries, etc.*

(b) *Gambling and Betting including casinos etc.*

(c) *Chit funds*

(d) *Nidhi company*

(e) *Trading in Transferable Development Rights (TDRs)*

(f) *Real Estate Business or Construction of Farm Houses*

(g) *Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes*

(h) *Activities/sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities mentioned in entry 18 of Annex B).*

Note : Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.]

[2]ANNEX B
SECTOR-SPECIFIC POLICY FOR FOREIGN INVESTMENT

In the following sectors/activities, FDI upto the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted upto 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received alongwith the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**. Earlier, Annex A, was substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 20-9-2012 and amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003, FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2005, w.e.f. 17-3-2005, FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2006, w.r.e.f. 8-11-2005, FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012, w.r.e.f. 31-3-2011.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Twelfth Amendment) Regulations, 2013, w.r.e.f. 22-8-2013. Earlier, Annex B, was substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012 and amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2013, w.e.f. 29-5-2013, FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2005, w.e.f. 17-3-2005, FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2005, w.e.f. 30-11-2005, FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003, FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2004, w.e.f. 6-5-2004, FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2005, w.e.f. 19-7-2005 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.

Sl. No.	*Sector/Activity*	[1][*% of Equity/ FDI Cap*]	*Entry Route*
AGRICULTURE			
1.	**Agriculture & Animal Husbandry :**		
	(*a*) Floriculture, Horticulture, Apiculture and Cultivation of vegetables & mushrooms under controlled conditions; (*b*) Development and production of seeds and planting material; (*c*) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and (*d*) Services related to agro and allied sectors *Note :* Besides the above, FDI is not allowed in any other agricultural sector/activity	100%	Automatic
1.1	**Other Conditions :**		
	I. For companies dealing with development of transgenic seeds/vegetables, the following conditions apply: (i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms. (ii) Any import of genetically modified materials if required shall be subject to the conditions laid down *vide* Notifications issued under Foreign Trade (Development and Regulation) Act, 1992. (iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time. (iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM). (v) Import of materials shall be in accordance with National Seeds Policy.		
	[2][*II. The term 'under controlled conditions' covers the following:* *(i) 'Cultivation under controlled conditions' for the categories of Floriculture, Horticulture, Cultivation of vegetables and Mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically.* *(ii) In case of Animal Husbandry, scope of the term 'under controlled conditions' covers—* *(a) Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems as prescribed by the National Livestock Policy, 2013 and in conformity with the existing 'Standard Operating Practices and Minimum Standard Protocol.'* *(b) Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.*]		

1. Substituted for "% of Cap/Equity" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. 17-4-2014.
2. Substituted, *ibid.*

SL No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
	(iii) In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers— *(a) Aquariums* *(b) Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.* *(iv) In the case of apiculture, scope of the term "under controlled conditions" covers—* *Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.]*		
2.	**Tea Plantation**		
2.1	Tea sector including tea plantations *Note :* Besides the above, FDI is not allowed in any other plantation sector/activity	100%	Government
2.2	**Other Condition:**		
	Prior approval of the State Government concerned in case of any future land use change.		
3.	**MINING**		
3.1	Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; *subject to* the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
3.2	**Coal and Lignite**		
	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and *subject to* the provisions of Coal Mines (Nationalization) Act, 1973.	100%	Automatic
	(2) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
3.3	**Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities**		
3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities *subject to* sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957	100%	Government
3.3.2	**Other conditions:**		
	India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as 'prescribed substances' under the Atomic Energy Act, 1962. Under the Industrial Policy Statement 1991, mining and production of minerals classified as 'prescribed substances' and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order,		

SL No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	1953 were included in the list of industries reserved for the public sector. *Vide* Resolution No. 8/1(1)/97-PSU/1422 dated 6th October, 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon). *Vide* Notification No. S.O. 61(E), dated 18-1-2006, the Department of Atomic Energy re-notified the list of 'prescribed substances' under the Atomic Energy Act, 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds and minerals/concentrates including Zircon, were removed from the list of 'prescribed substances'. (*i*) FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions *viz*: (A) value addition facilities are set up within India along with transfer of technology; (B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe : Disposal of Radioactive Wastes) Rules, 1987. (*ii*) FDI will not be allowed in mining of 'prescribed substances' listed in the Notification No. SO 61(E), dated 18-1-2006 issued by the Department of Atomic Energy. *Clarification:* (1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce Synthetic Rutile or Titanium Slag as an intermediate value added product. (2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (*i*) (A) above shall be deemed to be fulfilled.		
4.	**Petroleum & Natural Gas**		
4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
4.2	Petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
	MANUFACTURING		
5.	**Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)**		
5.1	FDI in MSEs [as defined under Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006)] will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act, 1951, for such manufacture. The issue of Industrial License is subject to a few general		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act, 1951.		
[1][6	**DEFENCE**		
6.1	*Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951*	49%	*Government route up to 49% Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.*
	Note: (i) *The above limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non-Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.* (ii) *Portfolio investment by FPIs/FIIs/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.*		
6.2	**Other Conditions** (i) *Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.* (ii) *The applicant company seeking permission of the Government for FDI up to 49% should be an Indian company owned and controlled by resident Indian citizens.* (iii) *The management of the applicant company should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company/partnership firm being resident Indians.* (iv) *Chief Security Officer (CSO) of the investee/joint venture company should be resident Indian citizen.* (v) *Full particulars of the Directors and the Chief Executives should be furnished along with the applications.* (vi) *The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R&D base.*		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2014, w.r.e.f. **26-8-2014**. Earlier, it was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014** and FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(vii) There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured. (viii) The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible. (ix) The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products. (x) Investee/joint venture company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India. (xi) Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted. (xii) Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies. (xiii) The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R&D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals. (xiv) Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises. (xv) Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons/ entities other than the Central or State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence. (xvi) All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs. (xvii) Applications for FDI up to 49% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by Cabinet Committee on Economic Affairs (CCEA). (xviii) Based on the recommendation of the Ministry of Defence and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the Ministry of Defence in respect of cases seeking permission of the Government for FDI beyond 49% which are likely to result in access to modern and 'state-of-art' technology in the country. (xix) Proposals for FDI beyond 49% with proposed inflow in excess of Rs. 1200 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee on Economic Affairs (CCEA).		

Sl. No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
	(xx) Government decision on applications for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement. *(xxi) For the proposal seeking Government approval for foreign investment beyond 49% applicant should be Indian company/foreign investor. Further condition at para (iii) above will not apply on such proposals.]*		
SERVICES SECTOR			
INFORMATION SERVICES			
7.	**Broadcasting**		
7.1	**Broadcasting Carriage Services**		
7.1.1	(1) **Teleports** (setting up of up-linking HUBs/Teleports); (2) **Direct to Home** (DTH); (3) **Cable Networks** [Multi System Operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability]; (4) **Mobile TV**; (5) **Headend-in-the Sky Broadcasting Service** (HITS)	74%	Automatic up to 49% Government route beyond 49% and up to 74%
7.1.2	**Cable Networks** [Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)].	49%	Automatic
7.2	**Broadcasting Content Services**		
7.2.1	**Terrestrial Broadcasting FM (FM Radio)**, subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations.	26%	Government
7.2.2	**Up-linking of 'News & Current Affairs' TV Channels**	26%	Government
7.2.3	**Up-linking a Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels**	100%	Government
7.3	FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/ Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.		
7.4	Foreign Investment (FI) in companies engaged in all the aforestated services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.		
[1][7.5	*The foreign investment (FI) limit in companies engaged in the aforestated activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Qualified Foreign Investors (QFIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities.]*		
7.6	Foreign investment in the aforestated broadcasting carriage services will be subject to the following security conditions/terms: **Mandatory Requirement for Key Executives of the Company** (i) The majority of Directors on the Board of the Company shall be Indian Citizens.		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment Regulations, 2014, w.r.e.f. **17-4-2014**. Earlier, entry 7.5, was amended by the FEM (Transfer or Issue of Securit by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(*ii*) The Chief Executive Officer (CEO), Chief Officer In-charge of technical network operations and Chief Security Officer should be resident Indian Citizens. **Security Clearance of Personnel** (*iii*) The Company, all Directors on the Board of Directors and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), shareholders who individually hold 10% or more paid-up capital in the company and any other category, as may be specified by the Ministry of Information and Broadcasting from time to time, shall require to be security cleared. In case of the appointment of Directors on the Board of the Company and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), etc., as may be specified by the Ministry of Information and Broadcasting from time to time, prior permission of the Ministry of Information and Broadcasting shall have to be obtained. It shall be obligatory on the part of the company to also take prior permission from the Ministry of Information and Broadcasting before effecting any change in the Board of Directors. [1][*(iv) The company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment. The security clearance shall be required to be obtained every two years.*] **Permission *vis-a-vis* Security Clearance** (*v*) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith. [1][*(vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel being denied or withdrawn for any reasons whatsoever, the permission holder/licensee will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government, failing which the permission/license granted shall be revoked and the company shall be disqualified to hold any such Permission/licence in future for a period of five years.*] **Infrastructure/Network/Software related requirement** (*vii*) The officers/officials of the licensee companies dealing with the lawful interception of Services will be resident Indian citizens. (*viii*) Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company. Clearance from the licensor would be required if such information is to be provided to anybody else. (*ix*) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant Law. (*x*) The Company must provide traceable identity of their subscribers. **Monitoring, Inspection and Submission of Information** (*xi*) The Company should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location as and when required by Government. (*xii*) The company, at its own costs, shall, on demand by the Government or its authorized representative, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. 17-4-2014.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(xiii) The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government or its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the company's activities and operations. Continuous monitoring, however, will be confined only to security related aspects, including screening of objectionable content. [1][*(xiv) The inspection will ordinarily be carried out by the Government of India, Ministry of Information & Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection.*] *(xv)* The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time. *(xvi)* The permission holder/licensee shall be liable to furnish the Government of India or its authorized representative or TRAI or its authorized representative, such reports, accounts, estimates, returns or such other relevant information and at such periodic intervals or such times as may be required. *(xvii)* The service providers should familiarize/train designated officials of the Government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems. **National Security Conditions** [1][*(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. The Government of India, Ministry of Information and Broadcasting shall have the right to temporarily suspend the permission of the permission holder/Licensee in public interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission, in future, for a period of five years.*] *(xix)* The company shall not import or utilize any equipment, which are identified as unlawful and/or render network security vulnerable. **Other conditions** *(xx)* Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services. *(xxi)* Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.		
8.	**Print Media**		
8.1	Publishing of newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/[2][FII/RFPI])	Government
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment NRIs/PIOs/[2][FII/RFPI])	Government
8.2.1	**Other conditions:**		
	(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendm[ent]) Regulations, 2014, w.r.e.f. 17-4-2014.
2. Substituted for "FII" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sec[ond] [A]mendment) Regulations, 2014, w.e.f. 19-3-2014.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4-12-2008.		
8.3	Publishing/printing of Scientific and Technical Magazines/ specialty journals/periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
8.4	Publication of facsimile edition of foreign newspapers	100%	Government
8.4.1	**Other conditions:**		
	(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India. (ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956. (iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31-3-2006, as amended from time to time.		
9.	**Civil Aviation**		
9.1	The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions. For the purposes of the Civil Aviation sector: (i) 'Airport' means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934; (ii) 'Aerodrome' means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto; (iii) 'Air transport service' means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights; (iv) 'Air Transport Undertaking' means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward; (v) 'Aircraft component' means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment; (vi) 'Helicopter' means a heavier than air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis; (vii) 'Scheduled air transport service' means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public; (viii) 'Non-Scheduled Air Transport service' means any service which is not a scheduled air transport service and will include Cargo airlines; (ix) 'Cargo airlines' would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation;		

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water; (xi) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.		
9.2	**Airports**		
	(a) Greenfield projects (b) Existing projects	100% 100%	Automatic Automatic upto 74% Government route beyond 74%
9.3	**Air Transport Services**		
	(1) Scheduled Air Transport Service/Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic upto 49% Government route beyond 49% and up to 74%
	(3) Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
9.3.1	**Other conditions**		
	(a) Air Transport Services would 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. [1][(c) *Foreign airlines are also, allowed to invest, in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:* (i) *It would be made under the Government approval route.* (ii) *The 49% limit will subsume FDI and FII/FPI investment.* (iii) *The investments so made would need to comply with the relevant regulations of 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) *A Scheduled Operator's Permit can be granted only to a company:* (a) *that is registered and has its principal place of business within India;* (b) *the Chairman and at least two-thirds of the Directors of which are citizens of India; and* (c) *the substantial ownership and effective control of which is vested in Indian nationals.* (v) *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*		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendmer Regulations, 2014, w.r.e.f. **17-4-2014**. Earlier, it was amended by the FEM (Transfer or Issue of Security by ... outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

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Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(vi) *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.* Note: (i) *The FDI limits/entry routes, mentioned at paragraphs 9.3(1) and 9.3(2) above, are applicable in the situation where there is no investment by foreign airlines.* (ii) *The dispensation for NRIs regarding FDI up to 100% will also continue in respect of the investment regime specified at paragraph 9.3.1(c)(ii) above.* (iii) *The policy mentioned at paragraph 9.3.1(c) above is not applicable to M/s Air India Limited.*] (*d*) [1][**]		
9.4	**Other services under Civil Aviation sector**		
	(1) Ground Handling Services subject to sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic upto 49% Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes and technical training institutions	100%	Automatic
10.	**Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.**	100%	Automatic
11.	**Construction Development: Townships, Housing, Built-up infrastructure**		
11.1	Townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure)	100%	Automatic
11.2	Investment will be subject to the following conditions: (1) Minimum area to be developed under each project would be as under: (*i*) In case of development of serviced housing plots, a minimum land area of 10 hectares. (*ii*) In case of construction-development projects, a minimum built-up area of 50,000 sq. mts. (*iii*) In case of a combination project, any one of the above two conditions would suffice. (2) Minimum capitalization of US$10 million for wholly owned subsidiaries and US$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company. (3) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. Original investment means the entire amount brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each instalment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB. (4) At least 50% of each such project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, 'undeveloped plots' will mean where roads, water		

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.

Sl. No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
	supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides, this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of service housing plots. (5) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned. (6) The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned. (7) The State Government/Municipal/Local Body concerned, which approves the building/development plans, would monitor compliance of the above conditions by the developer. *Note :* (*i*) The conditions at (1) to (4) above would not apply to Hotels & Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs. (*ii*) FDI is not allowed in Real Estate Business.		
12.	**Industrial Parks - New and existing**	**100%**	**Automatic**
12.1	(*i*) "Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity. [1][(*ii*) *"Infrastructure" refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), railway line/sidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.* (*iii*) *"Common Facilities" refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), railway line/sidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.*] (*iv*) "Allocable area" in the Industrial Park means— (*a*) in the case of plots of developed land - the net site area available for allocation to the units, excluding the area for common facilities. (*b*) in the case of built up space - the floor area and built-up space utilized for providing common facilities. (*c*) in the case of a combination of developed land and built-up space - the net site and floor area available for allocation to the units excluding the site area and built-up space utilized for providing common facilities. (*v*) "Industrial Activity" means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied R&D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. 27-8-2014.

Sl. No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
12.2	FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 11 above, provided the Industrial Parks meet with the under-mentioned conditions: (*i*) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area; (*ii*) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.		
13.	**Satellites - Establishment and operation**		
13.1	Satellites - Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government
14.	**Private Security Agencies**	49%	Government
[1][15.	**Telecom services (including Telecom Infrastructure Providers Category-I)** *All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified License (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.*	*100%*	*Automatic upto 49%* *Government route beyond 49%*
15.1.1	**Other condition:** *FDI up to 100% with 49% on the automatic route and beyond 49% on the Government route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, expect "Other Service Providers", which are allowed 100% FDI on the automatic route.*]		
16.	**TRADING**		
16.1	(*i*) **Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)**	100%	Automatic
16.1.1	Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with export/ex-bonded warehouse business sales and B2B e-Commerce.		
16.1.2	Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT): (*a*) For undertaking WT, requisite licenses/registration/permits, as specified under the relevant Acts/ Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(*b*) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities: (*i*) Entities holding sales tax/VAT registration/service tax/excise duty registration; or (*ii*) Entities holding trade licenses *i.e.* a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/registration certificate/membership certificate, as the case may be, is itself/himself/herself engaged in a business involving commercial activity; or (*iii*) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or (*iv*) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption. *Note:* An Entity, to whom WT is made, may fulfil any one of the 4 conditions. (*c*) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis. (*d*) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture. (*e*) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations. (*f*) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.		
16.2	**E-commerce activities**	**100%**	**Automatic**
	E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, *inter alia* implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
16.3	[1][***]		
[2][**16.4**	**Single Brand product retail trading**	*100%*	*Automatic up to 49%* *Government route beyond 49%*]
	(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices. (2) FDI in Single Brand product retail trading would be subject to the following conditions: (*a*) Products to be sold should be of a 'Single Brand' only. (*b*) Products should be sold under the same brand internationally *i.e.* products should be sold under the same brand in one or more countries other than India. (*c*) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.		

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. 17-4-2014.
2. Substituted, *ibid.*

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in the country, for the specific brand, directly or through a legally tenable agreement, with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval. (e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years; total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail trading. (f) Retail trading, in any form, by means of e-commerce, would not be permissible for companies with FDI, engaged in the activity of single brand retail trading. [1][*(3) Applications seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI upto 49%, the list of products/ product categories proposed to be sold except food products would be provided to the RBI.*] (4) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investments satisfies the notified guidelines, before being considered by the FIPB for Government approval.		
16.5	**Multi Brand Retail Trading**	51%	Government
	FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions: (i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded. (ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million. (iii) At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'back-end infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back-end infrastructure. Subsequent investment in the back-end infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements. (iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer and such industry shall continue to qualify as a 'small industry' for this purpose, even if it outgrows the said investment of US $ 2.00 million, during the course of its relationship		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	with the said retailer. Sourcing from agricultural co-operatives and farmers' co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. (*v*) Self-certification by the company, to ensure compliance of the conditions at serial Nos. (*ii*), (*iii*) and (*iv*) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors. (*vi*) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per the 2011 Census or any other cities as per the decision of the receptive State Governments, and may also cover an area of 10 kms. around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking. (*vii*) Government will have the first right to procurement of agricultural products. (*viii*) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The States/Union Territories which have conveyed their concurrence are as under : 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh[1] 6. Jammu & Kashmir 7. Karnataka[2] 8. Maharashtra 9. Manipur 10. Rajasthan 11. Uttarakhand 12. Daman & Diu and Dadra and Nagar Haveli (Union Territories) The States/Union Territories, which are willing to permit establishment of retail outlets under this policy, would convey their concurrence to the Government of India through the Department of Industrial Policy & Promotion and additions would be made accordingly. The establishment of the retail sales outlets will be in compliance of applicable State /Union Territory laws/regulations, such as the Shops and Establishments Act etc. (*ix*) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi brand retail trading. (*x*) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.		
	FINANCIAL SERVICES Foreign investment in other financial services, other than those indicated below, would require prior approval of the Government:		

1. With effect from 3rd day of June, 2013.
2. With effect from 4th day of July, 2013.

Sl. No.	*Sector/Activity*			*% of Equity/ FDI Cap*	*Entry Route*
[1][2][*17.*]	***Pharmaceuticals***				
[2][17.1]	Greenfield	100%	Automatic		
[2][17.2]	Brownfield	100%	Government		
	Note : [3][***]				
*[4][*17.3*	***Other Conditions***				
	(i) 'Non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board. *(ii) The prospective investor and the prospective investee are required to provide necessary certificate along with the FIPB application.* *(iii) Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.*]]				
[5][*F.1*]	**Asset Reconstruction Companies**				
[6][[7][*F. 1.1*]	*"Asset Reconstruction Company" (ARC) means a company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).*			*100% of paid-up capital of ARC (FDI+FII/FPI)*	*Automatic up to 49% Government route beyond 49%*
[7][*F.1. 1.2*]	**Other conditions:** (i) *Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank, up to 49% on the automatic route, and beyond 49% on the Government route.* (ii) *No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII/FPI controlled by the single sponsor.* (iii) *The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.* (iv) *FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs/ FPIs can invest up to 74 per cent of each tranche of scheme of SRs. Such investment should be within the FII/FPI limit on corporate bonds prescribed from time to time, and sectoral caps under extant FDI Regulations should also be complied with.* (v) *All investments would be subject to provisions of section 3(3)(f) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*]				

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2014, w.r.e.f. 8-1-2014.
2. Entries 25, 25.1 and 25.2 renumbered as 17, 17.1 and 17.2, respectively, by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
3. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.
4. Substituted, *ibid.*
5. Entry 17 renumbered as F.1 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
6. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**. Earlier, it was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
7. Entries 17.1 and 17.2 renumbered as F.1.1 and F.1.1.2, respectively, by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.

*Entry 25.3 should be read as 17.3.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
[1][F.2]	**Banking - Private sector**		
[1][F.2.1]	Banking - Private sector	74% including investment by [2][FIIs/RFPIs]	Automatic upto 49% Government route beyond 49% and upto 74%
[3][F.2.2]	**Other conditions:**		

(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by [2][FIIs/RFPIs], NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.

(2) The aggregate foreign investment in a private bank from all sources will be allowed - up to a maximum of 74 per cent of the paid-up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

(3) The stipulations as above will be applicable to all investments in existing private sector banks also.

(4) The permissible limits under portfolio investment schemes through stock exchanges for [2][FIIs/RFPIs] and NRIs will be as follows:

[4][(i) *In the case of FIIs/FPIs, as hitherto, individual FII/FPI holding is restricted to below 10 per cent of the total paid-up capital, aggregate limit for all FIIs/FPIs/QFIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.*

(a) *Thus, the FII/FPI/QFI investment limit will continue to be within 49 per cent of the total paid-up capital*]

(b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.

(c) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.

[4][(d) *Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per Regulation 14(5) as applicable.*]

(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.

(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid-up capital of the private bank will apply to non-resident investors as well.

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1. Entries 18 and 18.1 renumbered as F.2 and F.2.1, respectively, by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
2. Substituted for "FIIs" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
3. Entry 18.2 renumbered as F.2.2 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
4. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.

Sl. No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
	(ii) Setting up of a subsidiary by foreign banks (*a*) Foreign banks will be permitted to either have branches or subsidiaries but not both. (*b*) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid-up capital to enable them to set up a wholly-owned subsidiary in India. (*c*) A foreign bank may operate in India through only one of the three channels *viz.*, (*i*) branches (*ii*) a wholly-owned subsidiary and (*iii*) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank. (*d*) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid-up capital of the private sector bank is held by residents at all times consistent with para (i) (*b*) above. (*e*) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks. (*f*) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI. (*g*) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI. (*iii*) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.		
[1][*F.3*]	**Banking - Public Sector**		
[2][*F.3.1*]	Banking - Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate banks.	20% (FDI and Portfolio Investment)	Government
[3][*F.4*]	**Commodity Exchanges**		
[4][*F.4.1*]	1. Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges. 2. For the purposes of this Chapter, (i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities. (ii) "Recognized association" means an association to which recognition for the time being has been granted by the Central Government under section 6 of the Forward Contracts (Regulation) Act, 1952. (iii) "Association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative. (iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract.		

1. Entry 19 renumbered as F.3 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
2. Entry 19.1 renumbered as F.3.1, *ibid.*
3. Entry 20 renumbered as F.4, *ibid.*
4. Entry 20.1 renumbered as F.4.1, *ibid.*

Sl. No.	*Sector/Activity*	*% of Equity/ FDI Cap*	*Entry Route*
	(*v*) "Commodity derivative" means— ■ a contract for delivery of goods, which is not a ready delivery contract; or ■ a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.		
[1][[2][*F. 4.2*]	**Commodity Exchange**	*49% (FDI & FII/FPI) [Investment by Registered FII /FPI under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%*	*Automatic*]
[3][*F.4.3*]	**Other conditions:** (*i*) [4][FII/RFPI] purchases shall be restricted to secondary market only (*ii*) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies, and [3a][(*iii*) *Foreign investment in commodity exchanges will be subject to the guidelines of the Central Government/Forward Markets Commission (FMC).*]		
[4][*F.5*]	**Credit Information Companies (CIC)**		
[6][*F.5.1*]	Credit Information Companies	74% (FDI & [5][FII/RFPI])	Automatic
[7][*F.5.2*]	**Other Conditions:**		
	(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005. [8][*(2) Foreign investment is permitted subject to regulatory clearance from RBI.*] (3) Investment by a registered [5][FII/RFPI] under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 74% for foreign investment. [9][*(4) Such FII/FPI investment would be permitted subject to the conditions that:* (*a*) *A single entity should directly or indirectly hold below 10% equity.*]		

1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**. Earlier, it was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Entry 20.2 renumbered as F.4.2 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
3. Entry 20.3 renumbered as F.4.3, *ibid.*

3a. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.

4. Entry 21 renumbered as F.5 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
5. Substituted for "FII" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
6. Entry 21.1 renumbered as F.5.1 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
7. Entry 21.2 renumbered as F.5.2, *ibid.*
8. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2014, w.r.e.f. **17-4-2014**.
9. Substituted, *ibid.* Earlier, it was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(*b*) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and (*c*) [1][FIIs/RFPIs] investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.		
[2][*F.6*]	**Infrastructure Company in the Securities Market**		
[3][*F.6.1*]	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & [4][FII/ RFPI]) [FDI limit of 26 per cent and an [4][FII/RFPI] limit of 23 per cent of the paid-up capital]	Automatic
[5][*F.6.2*]	**Other Conditions:**		
[6][*F.6. 2.1*]	[4][FII/RFPI] can invest only through purchases in the secondary market		
[7][[8][*F.7*]	**Insurance**		
[9][*F. 7.1*]	(*i*) Insurance Company (*ii*) Insurance Brokers (*iii*) Third party Administrators (*iv*) Surveyors and Loss Assessors	26% (FDI+FPI/ FII+NRI)	Automatic
[10][*F.7.2*]	Other conditions : (1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route. (2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority for undertaking insurance activities. (3) The provisions of entry 18.2.4(*i*)(*c*) and (*e*) relating to 'Banking - Private Sector' shall be applicable in respect of bank promoted insurance companies. (4) Indian Insurance company is defined as a company: (*a*) which is formed and registered under the Companies Act, 1956; (*b*) in which the aggregate holdings of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed 26% paid-up equity capital of such Indian insurance company; (*c*) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business. (5) As per IRDA (Insurance Brokers) Regulations, 2002, "insurance broker" means a person for the time-being licensed by the Authority under Regulation 11, who for remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients.		

1. Substituted for "FIIs" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Entry 22 renumbered as F.6 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
3. Entry 22.1 renumbered as F.6.1, *ibid.*
4. Substituted for "FII" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
5. Entry 22.2 renumbered as F.6.2 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
6. Entry 22.2.1 renumbered as F.6.2.1, *ibid.*
7. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2014, w.r.e.f. 4-2-2014.
8. Entry 23 renumbered as F.7 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
9. Entry 23.1 renumbered as F.7.1, *ibid.*
10. Entry 23.2 renumbered as F.7.2, *ibid.*

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	(6) As per IRDA (TPA- Health Services) Regulations, 2001, "TPA" means a Third Party Administrator who, for the time being, is licensed by the Authority, and is engaged, for a fee or remuneration, by whatever name called as may be specified in the agreement with an insurance company, for the provision of health services. (7) Surveyors and Loss Assessors, will be governed by the IRDA Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000.]		
[1][F.8]	**Non-Banking Finance Companies (NBFCs)**		
[2][F.8.1]	Foreign investment in NBFC is allowed under the automatic route in only the following activities: (*i*) Merchant Banking (*ii*) Underwriting (*iii*) Portfolio Management Services (*iv*) Investment Advisory Services (*v*) Financial Consultancy (*vi*) Stock Broking (*vii*) Asset Management (*viii*) Venture Capital (*ix*) Custodian Services (*x*) Factoring (*xi*) Credit Rating Agencies (*xii*) Leasing & Finance (*xiii*) Housing Finance (*xiv*) Forex Broking (*xv*) Credit Card Business (*xvi*) Money Changing Business (*xvii*) Micro Credit (*xviii*) Rural Credit	100%	Automatic
[3][F.8.2]	**Other Conditions:**		
	(1) Investment would be subject to the following minimum capitalisation norms: (*i*) US $0.5 million for foreign capital up to 51% to be brought upfront. (*ii*) US $ 5 million for foreign capital more than 51% and up to 75% to be brought upfront. (*iii*) US $ 50 million for foreign capital more than 75% out of which US $ 7.5 million to be brought upfront and the balance in 24 months. (*iv*) NBFCs (*i*) having foreign investment more than 75% and up to 100%, and (*ii*) with a minimum capitalisation of US$ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by para 3.10.4.1 of DIPP Circular 1 of 2012 dated April 10, 2012, on Consolidated FDI Policy, therefore, shall not apply to downstream subsidiaries. (*v*) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (*i*), (*ii*) and (*iii*) above and (*vi*) below. (*vi*) Non-Fund based activities : US$ 0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:		

1. Entry 24 renumbered as F.8 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
2. Entry 24.1 renumbered as F.8.1, *ibid.*
3. Entry 24.2 renumbered as F.8.2, *ibid.*

Sl No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
	It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company. *Note* : The following activities would be classified as Non-Fund Based activities: (*a*) Investment Advisory Services (*b*) Financial Consultancy (*c*) Forex Broking (*d*) Money Changing Business (*e*) Credit Rating Agencies (*vii*) This will be subject to compliance with the guidelines of RBI. *Note:* (*i*) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc. (*ii*) Leasing & Finance covers only financial leases and not operating leases. (2) The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.		
[1][*F.9*]	**Power Exchanges**		
[2][*F.9.1*]	Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010	49% (FDI & [3][FII/RFPI])	Automatic
[4][*F.9.2*]	**Other conditions:**		
	(*i*) Such foreign investment would be subject to an FDI limit of 26 per cent and an [3][FII/RFPI] limit of 23 per cent of the paid-up capital; (*ii*) [3][FII/RFPI] purchases shall be restricted to secondary market only; (*iii*) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and (*iv*) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/ regulations; security and other conditionalities.		
[5][18.	**Railway Infrastructure**		
	Construction, operation and maintenance of the following: *(i) Suburban corridor projects through PPP, (ii) Speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signalling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/ sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems.*	*100%*	*Automatic*
	Note: *(i) Foreign Direct Investment in the abovementioned activities open to private participation including FDI is subject to sectoral guidelines of Ministry of Railways.* *(ii) Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.*]		

1. Entry 26 renumbered as F.9 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
2. Entry 26.1 renumbered as F.9.1, *ibid.*
3. Substituted for "FII" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
4. Entry 26.2 renumbered as F.9.2 by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2014, w.r.e.f. **27-8-2014**.
5. Inserted, *ibid.*

ANNEX C

REPORT BY THE INDIAN COMPANY RECEIVING AMOUNT OF CONSIDERATION FOR ISSUE OF SHARES/CONVERTIBLE DEBENTURES/OTHERS AS PER FOREIGN DIRECT INVESTMENT SCHEME

[1][***]

ANNEX D

FC-GPR

[2][***]

ANNEX E

RESERVE BANK OF INDIA

[3][***]

ANNEX F

FORM FC-TRS

[4][***]

[5][**FORM DR**

[*Refer* to paragraph 4(2) of Schedule 1]

Return to be filed by an Indian company who has arranged issue of GDR/ADR

Instructions : The form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai.

1. Name of the Company :
2. Address of Registered Office :
3. Address for correspondence :

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1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014. Prior to its omission, Annex C, as substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012 and inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.
2. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2013, w.e.f. 28-5-2013. Prior to its omission, Annex D, as substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 15-3-2011 and amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.
3. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2014, w.e.f. 12-6-2014. Earlier, Annex E was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second amendment) Regulations, 2014, w.e.f. 19-3-2014 and inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 15-3-2011.
4. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2013, w.e.f. 28-5-2013. Earlier, Annex F was inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012.
5. Substituted for 'Annexure C' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Earlier, Annexure C was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003.

4. Existing Business (Please give the NIC Code of the activity in which the company is predominantly engaged) :
5. Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof :
6. Name and address of the Depository abroad
7. Name and Address of the Lead/Manager Investment/ Merchant Banker :
8. Name and address of the Sub-Managers to the issue :
9. Name and address of the Indian custodians :
10. Details of FIPB approval :

    (Please quote the relevant NIC Code if the GDRs are being issued under the Automatic Route)
11. Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details :
12. Details of the Equity Capital — Before Issue — After Issue
    (*a*) Authorised Capital
    (*b*) Issued and Paid-up Capital
        (*i*) Held by persons Resident in India
        (*ii*) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (A list of foreign investors holding more than 10 per cent of the paid-up capital and number of shares held by each of them should be furnished)
        (*iii*) Held by NRIs/PIOs/OCBs
        (*iv*) Held by FIIs

        Total Equity held by non-residents
    (*c*) Percentage of equity held by non-residents to total paid-up capital
13. Whether issue was on private placement basis. If yes, please give details of the investors and GDRs/ADRs issued to each of them :
14. Number of GDRs/ADRs issued :
15. Ratio of GDRs/ADRs to underlying shares :
16. Issue Related Expenses :
    (*a*) Fee paid/payable to Merchant Bankers/ Lead Manager
        (*i*) Amount (in US $)
        (*ii*) Amount as percentage to the total issue
    (*b*) Other expenses
17. Whether funds are kept abroad. If yes, name and address of the bank :
18. Details of the listing agreement :

    Name of Stock Exchange

After Issue

Date of commencement of trading

19. The date on which GDRs/ADRs issue was launched :
20. Amount raised (in US $) :
21. Amount repatriated in (US $) :

Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with

Sd/- Sd/-

Chartered Accountant Authorised Signatory of the Company]

[1][FORM DR - Quarterly

[*Refer* to paragraph 4(3) of Schedule 1]

Quarterly Return

(To be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)

1. Name of the Company :
2. Address :
3. GDR/ADR issue launched on :
4. Total No. of GDRs/ADRs issued :
5. Total amount raised :
6. Total interest earned till end of quarter :
7. Issue Expenses and commission etc. :
8. Amount repatriated :
9. Balance kept abroad. Details :
   (*i*) Banks Deposits
   (*ii*) Treasury Bills
   (*iii*) Others (Please specify)
10. No. of GDRs/ADRs still outstanding :
11. Company's share price at the end of the quarter :
12. GDRs/ADRs price quoted on overseas stock exchange as at the end of the quarter :

Certified that the funds raised through GDRs/ADRs have not been invested in stock market or real estate.

Sd/- Sd/-

Chartered Accountant Authorised Signatory of the Company]

[2][***]

1. Substituted for 'Annexure D' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008. Earlier Annexure D was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003.
2. Annexure E was omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008.

SCHEDULE 2

[*See* Regulation 5(2)]

PURCHASE/SALE OF [1][*SHARES OR CONVERTIBLE DEBENTURES OR WARRANTS*] OF AN INDIAN COMPANY BY A REGISTERED FOREIGN INSTITUTIONAL INVESTOR UNDER PORTFOLIO INVESTMENT SCHEME

Purchase/sale of [1][*shares or convertible debentures or warrants*]

1. [2][(1) A registered Foreign Institutional Investor (FII) may purchase the [3][*shares or convertible debentures or warrants*] of an Indian company under Portfolio Investment Scheme.

(2) The purchase of [4][*shares or convertible debentures or warrants*] under sub-paragraph (1) shall be made through registered broker on recognized stock exchange in India.]

(3) The amount of consideration for purchase of [5][*shares or convertible debentures or warrants*] shall be paid out of inward remittance from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorised dealer in India, in accordance with these Regulations.

(4) The total holding by each FII/SEBI approved sub-account of FII shall not exceed 10% (ten per cent) of the total paid-up equity capital or 10% (ten per cent) of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all FIIs/sub-accounts of FIIs put together shall not exceed 24 per cent of paid-up equity capital or paid-up value of each series of convertible debentures :

[6][**Provided** that the limit of 24 per cent referred to in this paragraph may be increased up to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned by passing a resolution by its board of directors followed by passing of a special resolution to that effect by its general body.]

Explanation.—For arriving at the ceiling on holdings of FIIs, [4][*shares or convertible debentures or warrants*] acquired both through primary as well as secondary market will be included. However, the ceiling will not include investment made by FII through offshore Funds, Global Depository receipts and Euro-Convertible Bonds.

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1. Substituted for "shares and/or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (First Amendment) Regulations, 2004, w.e.f. 1-1-2004. Prior to its substitution, it read as under :

   "(1) A registered Foreign Institutional Investor (FII) may, through the Securities and Exchange Board of India, apply to the Reserve Bank for permission to purchase the shares and convertible debentures of an Indian company under Portfolio Investment Scheme. The permission may be granted by Reserve Bank subject to such terms and conditions as may be considered necessary.

   (2) The registered FII permitted by the Reserve Bank under sub-paragraph (1), shall purchase the shares/ convertible debentures of an Indian company through registered brokers on recognised stock exchanges in India."
3. Substituted for "shares and convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
4. Substituted for "shares/convertible debentures", *ibid.*
5. Substituted for "shares/debentures", *ibid.*
6. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2001, w.e.f. 20-9-2001. Prior to substitution, the proviso was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2001, w.e.f. 2-3-2001.

[1][(5) A registered FII is permitted to purchase [2][*shares or convertible debentures or warrants*] of an Indian company through offer/private placement, subject to the ceiling specified in sub-paragraph (4) of this paragraph and the Indian company is permitted to issue such shares:

Provided that—

(*a*) in case of Public Offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and

[3][(*b*) *in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable.*]]

[4][(6) A registered FII may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank of India and the SEBI from time to time.]

Maintenance of account by a registered FII for routing transactions of purchase and sale of [2][*shares or convertible debentures or warrants*].

2. [5][A registered Foreign Institutional Investor may open a Foreign Currency Account and/or a Special Non-Resident Rupee Account with a designated branch of an authorized dealer for routing the receipt and payment for transaction relating to purchase and sale of [2][*shares or convertible debentures or warrants*] under this Scheme, subject to the following conditions :

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003. Prior to its substitution, sub-paragraph (5) read as under :

   "(5) A registered FII may also be permitted to purchase shares/convertible debentures of an Indian company through private placement/arrangement, subject to the ceilings specified in sub-paragraph (4) of this paragraph."

2. Substituted for "shares/convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.

3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014, w.e.f. **8-7-2014**. Prior to its substitution, clause (*b*), as substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 21-4-2010, read as under :

   "(*b*) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per the Discounted Cash Flow method duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable."

4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amdt.) Regulations, 2008, w.r.e.f. 31-12-2007.

5. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (First Amendment) Regulations, 2004, w.e.f. 1-1-2004. Prior to its substitution, it read as under :

   "The Reserve Bank may, on application, permit a registered Foreign Institutional Investor to open a Foreign Currency Account and/or a Non-resident Rupee Account with a designated branch of an authorised dealer for routing the receipt of and payment for transactions relating to purchase and sale of shares/convertible debentures under this Scheme, subject to the following conditions :—

   (*i*) The account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the shares/convertible debentures sold on stock exchange.

   (*ii*) The funds in the account shall be utilised for purchase of shares/convertible debentures in accordance with the provisions of paragraph 1 of this Scheme or for remittance outside India.

   (*iii*) The funds from Foreign Currency Account of the registered FII may be transferred to Non-Resident Rupee account of the same FII and *vice versa*."

(*i*) The Account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the [1][*shares or convertible debentures or warrants*] sold on stock exchange.

(*ii*) The funds in the account shall be utilized for purchase of [1][*shares or convertible debentures or warrants*] in accordance with the provisions of paragraph 1 of this Scheme or for remittance outside India.

(*iii*) The funds from Foreign Currency Account of the Registered FII may be transferred to Special Non-Resident Rupee account of the same FII and *vice versa*.]

[2][(*iv*) The Foreign Currency Account and the Special Non-Resident Rupee account of the registered FII shall be a non-interest bearing account/s.]

Remittance of sale proceeds of [1][*shares or convertible debentures or warrants*].

3. The designated branch of an authorised dealer may allow remittance of net sale proceeds (after payment of taxes) or credit the net amount of sale proceeds of [1][*shares or convertible debentures or warrants*] to the foreign currency account or a Non-resident Rupee Account of the registered Foreign Institutional Investor concerned.

Investment by certain other investors.

4. [3][(1) A domestic asset management company or portfolio manager, who is registered with SEBI as a foreign institutional investor for managing the fund of a sub-account may make investment under the Scheme on behalf of—

(*i*) a person resident outside India who is a citizen of a foreign state, or

(*ii*) a body corporate registered outside India :

Provided [that] such investment is made out of funds raised or collected or brought from outside through normal banking channel.]

[4][***]

[5][(2)] Investments permitted to be made under sub-paragraph (1) shall not exceed 5% (five per cent) of the total paid-up equity capital or 5% (five per cent) of the paid-up value of each series of convertible debentures issued by an Indian Company, and shall also not exceed the over-all ceiling specified in sub-paragraph (4) of paragraph 1 of this Schedule.

1. Substituted for "shares/convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident Outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012.
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (First Amendment) Regulations, 2004, w.e.f. 1-1-2004. Prior to its substitution, it read as under :

   "(1) Reserve Bank may, subject to such terms and conditions as it may consider necessary permit a domestic asset management company or portfolio manager who is registered with SEBI as a foreign institutional investor for managing the funds of a sub-account, to make investment under the Scheme on behalf of:—

   (*i*) a person resident outside India who is a citizen of a foreign State, or

   (*ii*) a body corporate registered outside India :

   Provided such investment is made out of funds raised or collected or brought from outside India through normal banking channel."
4. Omitted, *ibid.* Prior to its omission, it read as under :

   "(2) The application to Reserve Bank for permission under sub-paragraph (*1*) *may* be made through SEBI."
5. Existing sub-paragraph (3) shall be renumbered as sub-paragraph (2), *ibid.*

[1][SCHEDULE 2A

[See *Regulation 5(2A)*]

PURCHASE/SALE OF [2][*SHARES OR CONVERTIBLE DEBENTURES OR WARRANTS*] OF AN INDIAN COMPANY BY REGISTERED FOREIGN PORTFOLIO INVESTOR (RFPI) UNDER FOREIGN PORTFOLIO INVESTMENT (FPI) SCHEME

1. Purchase/sale of [3][*shares or convertible debentures or warrants*]

A Registered Foreign Portfolio Investor (RFPI) registered in accordance with Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time, may purchase [4][*shares or convertible debentures or warrants*] of an Indian company under FPI Scheme.

2. Maintenance of account by a RFPI for routing transactions of purchase and sale of [2][*shares or convertible debentures or warrants*]

(*i*) A RFPI may open a Foreign Currency Account and/or a Special Non-Resident Rupee Account with a designated branch of an Authorized Dealer for routing the receipt and payment for transaction relating to purchase and sale of [2][*shares or convertible debentures or warrants*] under this Scheme, subject to the following conditions:

(*a*) The Account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the [2][*shares or convertible debentures or warrants*] sold on stock exchange.

(*b*) The funds in the account shall be utilized for purchase of [2][*shares or convertible debentures or warrants*] in accordance with the provisions of paragraph 1 of this Scheme or for remittance outside India.

(*c*) The funds from Foreign Currency Account of the RFPI may be transferred to Special Non-Resident Rupee account of the same RFPI and vice versa.

(*d*) The Foreign Currency Account and the Special Non-Resident Rupee account of the RFPI shall be non-interest bearing account/s.

(*ii*) The amount of consideration for purchase of [2][*shares or convertible debentures or warrants*] shall be paid out of inward remittance from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorised dealer in India, in accordance with these Regulations.

(*iii*) The total holding by each RFPI shall be below 10% (ten per cent) of the total paid-up equity capital or 10% (ten per cent) of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all RFPI put together shall not exceed 24 per cent of paid-up equity capital or paid up value of each series of convertible debentures. The said limit of 24 per cent will be called aggregate limit:

Provided that the aggregate limit of 24% referred to in this paragraph may be increased up to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned by passing a resolution by its Board of Directors followed by passing of a special resolution to that effect by its General Body.

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1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Substituted for 'shares/convertible debentures' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
3. Substituted for "shares and/or convertible debentures", *ibid.*
4. Substituted for 'shares and convertible debentures', *ibid.*

Explanation :

(*1*) For arriving at the ceiling on holdings of RFPI, [1][*shares or convertible debentures or warrants*] acquired both through primary as well as secondary market will be included. However, the ceiling will not include investment made by RFPI through off-shore Funds, Global Depository Receipts and Euro-Convertible Bonds.

(2) For computation of 24% or enhanced limit as the case may be, holding of RFPI and deemed RFPI in the investee company shall be included.

(*iv*) A RFPI is permitted to purchase [1][*shares or convertible debentures or warrants*] of an Indian company through offer/private placement, subject to the ceiling specified in sub-paragraph (*iii*) of this paragraph and the Indian company is permitted to issue such shares:

Provided that—

(*a*) in case of Public Offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and

[2][(*b*) *in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable.*]

Explanation:

Where a registered foreign institutional investor or a sub-account, prior to commencement of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to shares held by a foreign direct investor placed in similar position, under the policy of the Government of India relating to foreign direct investment for the time being in force.

(*v*) A RFPI may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank of India and the SEBI from time to time.

3. Remittance of sale proceeds of [1][***shares or convertible debentures or warrants***]

The designated branch of an authorised dealer may allow remittance of net sale proceeds (after payment of taxes) or credit the net amount of sale proceeds of [1][*shares or convertible debentures or warrants*] to the foreign currency account or a Special Non-resident Rupee Account of the registered Foreign Portfolio Investor concerned.

4. The existing class of investors namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be eligible to continue their investment in accordance with SEBI guidelines.]

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1. Substituted for 'shares/convertible debentures' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. 30-6-2014.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014, w.e.f. 8-7-2014.

   '(*b*) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per the Discounted free Cash Flow method duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable.'

SCHEDULE 3

[*See* Regulation 5(3)(*i*)]

PURCHASE/SALE OF SHARES AND/OR CONVERTIBLE DEBENTURES BY AN NRI [1][***] ON A STOCK EXCHANGE IN INDIA ON REPATRIATION AND/OR NON-REPATRIATION BASIS UNDER PORTFOLIO INVESTMENT SCHEME

1. A Non-resident Indian (NRI) [2][***] may purchase/sell shares and/or convertible debentures of an Indian company, through a registered broker on a recognised stock exchange, subject to the following conditions :—

[3][(*i*) NRIs may purchase and sell shares/convertible debentures under the Portfolio Investment Scheme through a branch designated by an Authorised Dealer for the purpose [4][***];]

(*ii*) the paid-up value of shares of an Indian company, purchased by each NRI [5][***] both on repatriation and on non-repatriation basis, does not exceed 5 per cent of the paid-up value of shares issued by the company concerned;

(*iii*) the paid-up value of each series of convertible debentures purchased by each NRI [5][***] both on repatriation and non-repatriation basis does not exceed 5 per cent of the paid-up value of each series of convertible debentures issued by the company concerned;

(*iv*) the aggregate paid-up value of shares of any company purchased by all NRIs [6][***] does not exceed 10 per cent of the paid-up capital of the company and in the case of purchase of convertible debentures the aggregate paid-up value of each series of debentures purchased by all NRIs [6][***] does not exceed 10 per cent of the paid-up value of each series of convertible debentures :

Provided that the aggregate ceiling of 10 per cent referred to in this clause may be raised to 24 per cent if a special resolution to that effect is passed by the General Body of the Indian company concerned;

(*v*) the NRI [7][***] investor takes delivery of the shares purchased and gives delivery of shares sold;

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1. Words '/OCB' omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001.

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

2. Words 'or an Overseas Corporate Body (OCB)' omitted, *ibid.*

3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003. Prior to substitution, sub-paragraph (*i*), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001, read as under :

   '(*i*) the NRI designates a branch of an authorised dealer for routing his transactions relating to purchase and sale of shares/convertible debentures under this Scheme, and routes all such transactions only through the branch so designated;'

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

4. Words 'and duly approved by the Reserve Bank of India' omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2013, w.e.f. 27-2-2013.

5. Words 'or OCB' omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001.

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

6. Words 'or OCBs' omitted, *ibid.*

7. Words 'or OCB', *ibid.*

(*vi*) [1][***]

(*vii*) [2][***]

[3][**Report to Reserve Bank.**

2. The link office of the designated branch of an authorized dealer referred to in paragraph 1 shall obtain a Unique Code number from the Reserve Bank. The said link office of the designated branch of an authorized dealer shall furnish to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai, a report on daily basis on PIS transactions undertaken on behalf of NRIs for their entire bank under the Online Report Filing System (ORFS). The said link office shall be responsible to ensure that the data submitted to the Reserve Bank is reconciled by periodically taking a NRI holding report for its bank.]

[4][**Maintenance of accounts by an NRI for routing transactions for purchase and sale of shares/ convertible debentures.**

3. An NRI may open a separate sub-account of NRE/NRO account (opened and maintained by Authorised Dealer bank in terms of the Foreign Exchange Management (Deposit) Regulations, 2000)

1. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2013, w.e.f. 27-2-2013. Prior to its omission, sub-paragraph (*vi*), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001, read as under :

   "(*vi*) payment for purchase of shares and/or debentures is made by inward remittance in foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained in India if the shares are purchased on repatriation basis and by inward remittance or out of funds held in NRE/FCNR/ NRO/NRNR/NRSR account of the NRI concerned maintained in India where the shares/debentures are purchased on non-repatriation basis;"

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

2. Omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001.

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2013, w.e.f. 27-2-2013. Prior to its substitution, paragraph 2, as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001, read as under :

   "2. *Report to Reserve Bank.*— The link office of the designated branch of an authorised dealer referred to in paragraph 1 shall furnish to the Chief General Manager, RBI, ECD, Central Office, Mumbai, a report on daily basis on PIS transactions undertaken by it, such report to be furnished online or on floppy or in hard copy in a format supplied by Reserve Bank."

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

4. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2013, w.e.f. 27-2-2013. Prior to its substitution, paragraph 3, as substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003, and later on amended by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2002*, w.r.e.f. 29-11-2001, read as under :

   "3. *Remittance/credit of sale/maturity proceeds of shares and/or debentures.*—The net sale/maturity proceeds (after payment of taxes) of shares and/or debentures of an Indian company purchased by NRI under this scheme, may be allowed by the designated branch of an authorised dealer referred to in paragraph 1,

   (*a*) to be credited to NRO account of the NRI investor where the payment for purchase of shares and/or debentures sold was made out of funds held in NRO account or where the shares and/or debentures were purchased on non-repatriation basis, or

   (*b*) at the NRI investor's option, to be remitted abroad or credited to his/its NRE/FCNR/NRO account of the NRI, where shares and/or debentures were purchased on repatriation basis."

   *As corrected *vide* Notification No. GSR 551(E), dated 31-8-2004.

with a designated branch of an Authorized Dealer bank referred to in paragraph 1, for routing the receipt and payment for transactions relating to purchase and sale of shares/convertible debentures under this Scheme. NRE(PIS) account shall be opened for investment made on repatriation basis and NRO(PIS) account shall be opened for investment made on non-repatriation basis under the Scheme. The designated branch of an Authorised Dealer bank shall ensure that sale proceeds of shares/convertible debentures which have been acquired by modes other than Portfolio Investment Scheme such as underlying shares acquired on conversion of ADRs/GDRs, shares/convertible debentures acquired under FDI Scheme, shares/convertible debentures purchased outside India from other NRIs, shares/convertible debentures acquired under private arrangement from residents/non-residents, shares/convertible debentures purchased while resident in India, do not get credited/debited in the NRE(PIS)/NRO(PIS) account opened exclusively for routing transactions under this Scheme.]

[1][**Permitted Credits/Debits.**

4. (A) Permitted Credits/Debits in NRE(PIS) account

Credits

(i) Inward remittances in foreign exchange through normal banking channels;

(ii) Transfer from the NRI's other NRE accounts or FCNR(B) accounts maintained with Authorised Dealer in India ;

(iii) Net sale proceeds (after payment of applicable taxes) of shares/convertible debentures acquired on repatriation basis under the Scheme and sold on stock exchange through registered broker; and

(iv) Dividend or income earned on investment made on repatriation basis under the Scheme

Debits

(i) Outward remittances of dividend or income earned;

(ii) Amounts paid on account of purchase of shares and convertible debentures on repatriation basis on stock exchanges through registered broker under the Scheme; and

(iii) Any charges on account of sale/purchase of shares or convertible debentures under the Scheme.

(B) Permitted Credits/Debits in NRO(PIS) account

Credits

(i) Inward remittances in foreign exchange through normal banking channels;

(ii) Transfer from the NRI's other NRE accounts or FCNR(B) accounts or NRO accounts maintained with Authorised Dealer in India;

(iii) Net sale proceeds (after payment of applicable taxes) of shares and convertible debentures acquired on repatriation basis (at the option of the NRI) and non-repatriation basis under the Scheme and sold on stock exchange through registered broker; and

(iv) Dividend or income earned on investment made on repatriation basis under the Scheme

Debits

(i) Outward remittances of dividend or income earned;

(ii) Amounts paid on account of purchase of shares and convertible debentures on non-repatriation basis on stock exchanges through registered broker under PIS;

(iii) Any charges on account of sale/purchase of shares or convertible debentures under PIS.]

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2013, w.e.f. 27-2-2013.

SCHEDULE 4

[*See* Regulation 5(3)(*ii*)]

PURCHASE AND SALE OF [1][*SHARES OR CONVERTIBLE DEBENTURES OR WARRANTS*] BY A NON-RESIDENT INDIAN (NRI) [2][***], ON NON-REPATRIATION BASIS

Prohibition on purchase of [1][*shares or convertible debentures or warrants*] of certain companies.

1. No purchase of [3][*shares or convertible debentures or warrants*] of an Indian company shall be made under this scheme if the company concerned is a chit fund or a nidhi company or is engaged in agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

Explanation.—For the purpose of this paragraph, real estate business shall not include development of township, construction of residential/commercial premises, roads, bridges, etc.

Permission to purchase and/or sell [1][*shares or convertible debentures or warrants*] of an Indian company.

2. Subject to paragraph 1, a Non-resident Indian [4][***] may without any limit, purchase on non-repatriation basis, [3][*shares or convertible debentures or warrants*] of an Indian company issued whether by public issue or private placement or right issue :

[5][***]

Method of payment for purchase of [1][*shares or convertible debentures or warrants*].

3. The amount of consideration for purchase of [3][*shares or convertible debentures or warrants*] of an Indian company on non-repatriation basis, shall be paid by way of inward remittance through

1. Substituted for "shares/convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
2. Words "or an Overseas Corporate Body (OCB)" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
3. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
4. Words "or an Overseas Corporate Body" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
5. Provisos omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012, w.r.e.f. 31-3-2011. Prior to their omission, the said provisos, as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2003, w.e.f. 18-6-2003, read as under:

   "**Provided** that the person to whom the shares are being transferred, shall obtain prior permission of the Central Government to acquire the shares if he has, as on January 12, 2005, an existing joint venture or technology transfer/trademark agreement in the same field as that of the company of which the shares or convertible debentures to be acquired by him :

   Provided further that no prior permission of Central Government shall be required for :—

   (*a*) transfer of shares to multinational financial institutions such as Asian Development Bank (ADB), International Finance Corporation (IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gesselschaft (DEG).

   (*b*) transfer of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer/trademark agreement of the person to whom the shares are to be transferred are also in the Information Technology sector or in the mining sector for same area/mineral.

   (*c*) investments to be made by Venture Capital Funds registered with SEBI; investments by multinational financial institutions or where in the existing joint-venture investment by either of the parties is less than 3 per cent; or where the existing joint venture/collaboration is defunct or sick."

normal banking channels from abroad or out of funds held in NRE/FCNR/NRO/NRSR/NRNR account maintained with an authorised dealer or as the case may be with an authorised bank in India :

Provided that in the case of an NRI [1][***] resident in Nepal and Bhutan, the amount of consideration for purchase of [2][*shares or convertible debentures or warrants*] of an Indian company on non-repatriation basis, shall be paid only by way of inward remittance in foreign exchange through normal banking channels.

Sale/Maturity proceeds of [2][*shares or convertible debentures or warrants*].

4. (*i*) The sale/maturity proceeds (net of applicable taxes) of [2][*shares or convertible debentures or warrants*] purchased under this Scheme shall be credited only to NRSR account where the purchase consideration was paid out of funds held in NRSR account and to NRO or NRSR account at the option of the seller where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO/NRNR account.

(*ii*) The amount invested in [2][*shares or convertible debentures or warrants*] under this Scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

SCHEDULE 5

[*See* Regulation 5(4)]

PURCHASE AND SALE OF SECURITIES OTHER THAN SHARES OR CONVERTIBLE DEBENTURES OF AN INDIAN COMPANY BY A PERSON RESIDENT OUTSIDE INDIA

[3][Permission to Foreign Institutional Investors for purchase of securities.

1. A registered Foreign Institutional Investor (FII) may [4][*purchase the following securities on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time*] :

(*a*) dated Government securities/treasury bills;

(*b*) listed non-convertible debentures/bonds issued by an Indian company;

(*c*) commercial papers issued by an Indian company;

(*d*) units of domestic mutual funds;

1. Word "/OCB" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
2. Substituted for "shares or convertible debentures" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014, w.r.e.f. **30-6-2014**.
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012. Earlier, paragraph 1 was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2006, w.r.e.f. 8-11-2005, FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2006, w.e.f. 6-1-2006, FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.e.f. 22-8-2008 and FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2009, w.r.e.f. 17-10-2008.
4. Substituted for "purchase, on repatriation basis, either directly from the issuer of such securities or through a registered stock broker on a recognized Stock Exchange in India the following securities, subject to the terms and conditions as specified by the SEBI and the Reserve Bank from time to time" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2014, w.e.f. **11-7-2014**.

[1][(e) Security Receipts issued by Asset Reconstruction Companies provided that the total holdings of all FIIs put together shall not exceed 74% of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies;]

(f) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital as defined by Reserve Bank, and modified from time to time) [2][provided that the investment by all eligible investors in Perpetual Debt Instruments (Tier I)] shall not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII shall not exceed the limit of 10 per cent of each issue. [3][***];

(g) with effect from April 29, 2011 listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines [4][***];

(h) with effect from November 3, 2011 non-convertible debentures/bonds issued by Non-Banking Finance Companies categorized as 'Infrastructure Finance Companies' (IFCs) by the Reserve Bank [5][***];

(i) with effect from November 22, 2011, Rupee denominated bonds/units issued by Infrastructure Debt Funds [6][***] [7][***];

(j) with effect from March 1, 2012, primary issues of non-convertible debentures/bonds provided such non-convertible debentures/bonds are committed to be listed within 15 days of such investment. In the event of such non-convertible debentures/bonds issued not being listed within 15 days of issuance, for any reason, then the FII shall immediately dispose of those non-convertible debentures/bonds either by way of sale to a third party or to the issuer and the terms of offer to FIIs should contain a clause that the issuer of such debt securities shall immediately redeem/buy-back those securities from the FIIs in such an eventuality;

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1. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2013, w.e.f. 29-5-2013. Earlier, clause (e) was amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013.
2. Substituted for "provided that the investment by all FIIs in Perpetual Debt instruments (Tier I)", *ibid.*
3. Words "The investment by FIIs in Debt capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt", omitted *ibid.*
4. Words ", subject to residual maturity as stipulated by Reserve Bank from time to time" omitted, *ibid.* Earlier the quoted words were amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013.
5. Words ", subject to residual maturity as stipulated by the SEBI and the Reserve Bank from time to time," omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013. Earlier, the quoted words were amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013.
6. Words "subject to residual maturity as stipulated by the Reserve Bank and SEBI from time to time," omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013. Earlier the quoted words were amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013.
7. Words "provided that the FIIs may trade such bonds/units amongst the eligible non-resident investors for Infrastructure Debt Funds within the lock-in period" omitted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013.

[1][(*k*) credit enhanced bonds;]

[2][(*l*) listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations:]

Provided that FIIs may offer such securities as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-regulation (6) of regulation 5.]

[3][**Permission for Qualified Foreign investors for purchase of securities.**

1A: (*i*) A QFI may purchase on repatriation basis, subject to the terms and conditions stipulated by the SEBI and the Reserve Bank in this regard from time to time in the following rupee denominated units of:

(*a*) equity schemes of SEBI registered domestic mutual funds,

(*b*) debt scheme of SEBI registered domestic mutual funds which invest in infrastructure,

(*c*) any scheme of SEBI registered domestic mutual funds that hold at least 25 per cent of their assets (either in debt or equity or both) in infrastructure.

For the purpose of sub-clauses (*b*) and (*c*) above, 'infrastructure' shall mean infrastructure as defined in terms of the ECB guidelines.

(*ii*) A QFI may purchase securities referred to in sub-clauses (*a*) to (*c*) above under the following routes, subject to the terms and conditions stipulated by SEBI and Reserve Bank in this regard, from time to time:

(*a*) Direct Route - SEBI registered Qualified Depository Participant (QDP) - route;

(*b*) Indirect Route - Unit Confirmation Receipt (UCR) route.]

[4][(*iii*) A QFI may:

(*a*) purchase, on repatriation basis through SEBI registered Qualified Depository Participants (QDPs) (defined as per the extant SEBI regulations), listed non-convertible debentures, listed bonds of Indian companies and listed units of Mutual Fund Debt Schemes directly from the issuer or through a registered stock broker on a recognized stock exchange in India and sell through a registered stock broker on a recognized stock exchange in India or by way of buy-back or redemption by the issuer;

(*b*) invest in primary issues of non-convertible debentures/bonds provided such non-convertible debentures/bonds are committed to be listed within 15 days of such investment. In the event of such non-convertible debentures/bonds issued to the QFI not being listed within 15 days of issuance to the QFI for any reason, then the QFI shall immediately dispose of these non-convertible debentures/bonds either by way of sale to a third party or to the issuer and the terms of offer to QFI should contain a clause that the issuer of such debt securities shall immediately redeem/buy-back the said securities from the QFIs in such an eventuality.]

[5][(*iv*) A QFI which purchases securities under this Regulation shall open a single demat account with a Qualified Depository Participant in India.]

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2013, w.e.f. 4-10-2013.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2014, w.e.f. 30-5-2014.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 9-8-2011.
4. Inserted, *ibid*, w.r.e.f. 16-7-2012.
5. Inserted, *ibid*, w.r.e.f. 9-8-2011.

[1][(v) QFI may purchase, [2][*the following securities on repatriation basis through SEBI registered Qualified Depository Participant (QDP) and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time*] :

(a) dated Government securities/treasury bills;

(b) commercial papers issued by an Indian company;

(c) Security Receipts issued by Asset Reconstruction Companies provided that the total holding by an individual QFI in each tranche of scheme of Security Receipts shall not exceed 10 per cent of the issue and the total holdings of all eligible investors put together shall not exceed 49 per cent of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies;

(d) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital as defined by Reserve Bank, and modified from time to time) provided that the investment by eligible investors in Perpetual Debt instruments (Tier I) shall not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual QFI shall not exceed the limit of 10 per cent of each issue;

(e) listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines;

(f) non-convertible debentures/bonds issued by Non-Banking Finance Companies categorized as 'Infrastructure Finance Companies (IFCs)' by the Reserve Bank;

(g) Rupee denominated bonds/units issued by Infrastructure Debt Funds;]

[3][(h) credit enhanced bonds;]

[4][(i) listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations.]

[5][**Permission to other non-resident investors for purchase of securities.**

1B. [6][(i) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds which are registered with SEBI as eligible investors in Infrastructure Debt Funds may purchase on repatriation basis Rupee Denominated bonds/units issued by Infrastructure Debt Funds.]]

[7][(ii) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks registered with SEBI may

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013.
2. Substituted for 'on repatriation basis through SEBI registered Qualified Depository Participant (QDP), either directly from the issuer or through a registered broker on recognized Stock Exchange in India the following securities, subject to terms and condition as specified by the SEBI and the Reserve Bank from time to time' by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2014, w.e.f. 11-7-2014.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2013, w.e.f. 4-10-2013.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2014, w.e.f. 30-5-2014.
5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 22-11-2011.
6. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013. Prior to its substitution, clause (i), as amended by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013, read as under :

   "(i) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and High Networth Individuals which are registered with SEBI as eligible non-resident investors in Infrastructure Debt Funds may purchase on repatriation basis Rupee denominated bonds/units issued by Infrastructure Debt Funds subject to residual maturity as stipulated by the Reserve Bank and SEBI from time to time."
7. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 25-6-2012.

purchase, on repatriation basis, [1][dated Government Securities, subject to the terms and conditions and the limits as stipulated by the Reserve Bank and SEBI from time to time].]

[2][(*iii*) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds and Pension Funds and Foreign Central Banks registered with SEBI may purchase, [3][*the following securities on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time*] :

(*a*) dated Government securities/treasury bills;

(*b*) commercial papers issued by an Indian company ;

(*c*) units of domestic mutual funds;

(*d*) listed non-convertible debentures/bonds issued by an Indian company;

(*e*) listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines;

(*f*) non-convertible debentures/bonds issued by Non-Banking Finance Companies categorized as 'Infrastructure Finance Companies (IFCs)' by the Reserve Bank;

(*g*) Security Receipts issued by Asset Reconstruction Companies provided that the total holding by an individual long term investor in each tranche of scheme of Security Receipts shall not exceed 10 per cent of the issue and the total holdings of all eligible investors put together shall not exceed 49 per cent of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies;

(*h*) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital as defined by Reserve Bank, and modified from time to time) provided that the investment by all eligible investors in Perpetual Debt instruments (Tier I) shall not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual long term investor shall not exceed the limit of 10 per cent of each issue;

(*i*) primary issues of non-convertible debentures/bonds provided such non-convertible debentures/bonds are committed to be listed within 15 days of such investment. In the event of such non-convertible debentures/bonds issued not being listed within 15 days of issuance, for any reason, then the long term investor shall immediately dispose of those non-convertible debentures/bonds either by way of sale to a third party or to the issuer and the terms of offer to long term investors should contain a clause that the issuer of such debt securities shall immediately redeem/buyback those securities from the long term investors in such an eventuality;]

[4][(*j*) credit enhanced bonds;]

1. Substituted for "dated Government securities, subject to the terms and conditions as stipulated by the SEBI and the Reserve Bank from time to time" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013. Prior to its substitution, clause (*iii*), as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2013, w.e.f. 19-1-2013, read as under :

   "(*iii*) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds and Pension Funds registered with SEBI as eligible non-resident investors in infrastructure Debt Funds may purchase Rupee denominated corporate bonds on repatriation basis within the limits as stipulated by the Reserve Bank and SEBI from time to time. In addition, Foreign Central Banks may purchase rupee denominated corporate bonds on repatriation basis within the limits from the date of this Notification."
3. Substituted for "on repatriation basis, either directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, the following securities, subject to the terms and conditions as specified by the SEBI and the Reserve Bank from time to time, namely" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2014, w.e.f. **11-7-2014**.
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2013, w.e.f. 4-10-2013.

[1][(*k*) listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations.]

[2][**Permission to registered Foreign Portfolio Investors (RFPI) for purchase of securities**

1C. (1) A registered Foreign Portfolio Investor (RFPI) may purchase, on repatriation basis, either directly from the issuer of such securities or through a registered stock broker on a recognized Stock Exchange in India the following securities, subject to the terms and conditions as specified by the SEBI and the Reserve Bank from time to time:

(*a*) dated Government securities/treasury bills;

(*b*) listed non-convertible debentures/bonds issued by an Indian company;

(*c*) commercial papers issued by an Indian company;

(*d*) units of domestic mutual funds;

(*e*) Security Receipts issued by Asset Reconstruction Companies provided that the total holdings of all eligible investors put together shall not exceed 74% of the paid up value of each tranche of scheme of Security Receipts issued by the Asset Reconstruction Companies;

(*f*) Perpetual Debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital (Tier I capital and Tier II capital as defined by Reserve Bank and modified from time to time) provided that the investment by all eligible investors in Perpetual Debt Instruments (Tier I) shall not exceed an aggregate ceiling of 49 per cent of each issue and investment by individual RFPI shall not exceed the limit of 10 per cent of each issue;

(*g*) listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines;

(*h*) non-convertible debentures/bonds issued by Non-Banking Financial Companies categorized as 'Infrastructure Finance Companies' (IFCs) by the Reserve Bank;

(*i*) Rupee denominated bonds/units issued by Infrastructure Debt Funds;

(*j*) primary issues of non-convertible debentures/ bonds provided such non-convertible debentures/bonds are committed to be listed within 15 days of such investment. In the event of such non-convertible debentures/bonds issued not being listed within 15 days of issuance, for any reason, then the RFPI shall immediately dispose of those non-convertible debentures/bonds either by way of sale to a third party or to the issuer and the terms of offer to RFPIs should contain a clause that the issuer of such debt securities shall immediately redeem/buyback those securities from the RFPIs in such an eventuality;

(*k*) credit enhanced bonds;

[1][(*l*) listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations:]

Provided that RFPIs may offer such securities as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-regulation (6A) of Regulation 5.]

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2014, w.e.f. 30-5-2014.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.

Permission to Non-resident Indian [1][***] for purchase of securities.

2. [2][(1A) A Non-resident Indian may, without limit, purchase on repatriation basis,

(i) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;

(ii) bonds issued by a Public Sector Undertaking (PSU) in India;

(iii) shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids;

[3][(iv) bonds/units issued by Infrastructure Debt Funds;]

[4][(v) listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations.]

(1B) A Non-resident Indian may purchase on repatriation basis perpetual debt instruments eligible for inclusion as Tier I capital and Debt capital instruments as upper Tier II capital issued by banks in India to augment their capital, as stipulated by Reserve Bank from time to time. The investments by all NRIs in Perpetual Debt Instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 per cent of each issue. Investment by NRIs in Debt Capital Instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.]

(2) A Non-resident Indian [5][***] may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings Certificates.

[4][A Non-resident Indian may, without limit, purchase on non-repatriation basis, listed non-convertible/redeemable preference shares or debentures issued in terms of regulation 7(2) of these Regulations.]

[6][(3) A Multilateral Development Bank which is specifically permitted by Government of India to float rupee bonds in India may purchase Government dated securities.]

1. Words 'and Overseas Corporate Body' omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
2. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2008, w.r.e.f. 25-1-2006. Prior to its substitution, sub-paragraph (1), as amended by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003, read as under:

   "(1) A Non-resident Indian may, without limit, purchase on repatriation basis,

   (i) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;

   (ii) bonds issued by a public sector undertaking (PSU) in India;

   (iii) shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids."
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013, w.e.f. 1-4-2013. Prior to its substitution, clause (iv), as inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 22-11-2011, read as under :

   "(iv) bonds/units issued by Infrastructure Debt Funds, subject to lock-in period and residual maturity as stipulated by the Reserve Bank and SEBI from time to time, provided that a Non-Resident Indian may trade such bonds/units amongst the eligible non-resident investors for Infrastructure Debt Funds within the lock-in period.'
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fifth Amendment) Regulations, 2014, w.e.f. 30-5-2014.
5. Words 'or an Overseas Corporate Body' omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
6. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2003, w.e.f. 27-10-2003.

[1][**Permission to Foreign Central Banks for purchase of Government Securities.**

2A. A Foreign Central Bank may purchase and sell dated Government securities/treasury bills in the secondary market subject to the conditions as may be stipulated by the Reserve Bank from time to time.]

[2][**2A.*** A person resident outside India, being central bank of any country under the law for the time being in force in that country, may purchase and sell dated Government securities/treasury bills subject to the conditions as may be stipulated by Reserve Bank from time to time.]

Method of payment of purchase consideration.

3. (1) A registered Foreign Institutional Investor who purchases securities under the provisions of this Schedule shall make the payment for purchase of such securities either by inward remittance through normal banking channels or out of funds held in Foreign Currency Account or Non-resident Rupee Account maintained by the Foreign Institutional Investor with a designated branch of an authorised dealer with the approval of Reserve Bank in terms of paragraph 2 of Schedule 2.

[3][(1A) A RFPI who purchases securities under the provisions of this Schedule shall make the payment for purchase of such securities either by inward remittance through normal banking channels or out of funds held in Foreign Currency Account or Special Non-resident Rupee Account maintained by the RFPI with a designated branch of an authorised dealer in terms of paragraph 2 of Schedule 2A.]

(2) A non-resident Indian [4][***] who purchases securities on repatriation basis, under sub-paragraph (1) of paragraph 2, of this Schedule, shall make payment either by inward remittance through normal banking channels or out of funds held in his/its NRE/FCNR account.

(3) A non-resident Indian [4][***] who purchases securities on non-repatriation basis, under sub-paragraph (2) of paragraph 2 of this Schedule, shall make payment either by inward remittance through normal banking channels or out of funds held in his/its NRE/FCNR/NRO/NRSR/NRNR account.

[5][(4) A Multilateral Development Bank which purchases Government dated securities under this Schedule, shall make payment either by inward remittance through normal banking channels or out of funds held in the account opened with the specific approval of the RBI.]

[6][(5) A QFI who purchases securities under this Schedule (other than by way of Indirect Route) shall make payment out of funds held in a single non-interest bearing Rupee Account maintained with an AD bank in terms of the Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time.]

Permission for Sale of Securities.

4. A person resident outside India who has purchased securities in accordance with this Schedule [7][*may sell/redeem the securities subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time*].

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2007, w.r.e.f. 17-10-2007.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2007, w.e.f. 31-5-2007.
3. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
4. Words "or an Overseas Corporate Body" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
5. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2003, w.e.f. 27-10-2003.
6. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 9-8-2011.
7. Substituted for "may (*a*) sell such securities through a registered stock broker on a recognised stock exchange or (*b*) tender units of mutual funds to the issuer for repurchase or for payment of maturity proceeds or (*c*) tender Government securities/treasury bills to the Reserve Bank for payment of maturity proceeds" by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2014, w.e.f. 11-7-2014.

*Need be read as '2B'.

5. Remittance/credit of sale/maturity proceeds.

(*i*) In the case of a registered Foreign Institutional Investor who has sold securities in accordance with paragraph 4, the designated branch of an authorised dealer referred to in sub-paragraph (1) of paragraph 3 may allow remittance of net sale/maturity proceeds (after payment of taxes) or credit the net amount of sale/maturity proceeds of such securities to the foreign currency account or Non-resident Rupee Account of the FII investor maintained in accordance with the provisions of paragraph 2 of Schedule 2.

[1][(*ia*) In the case of a RFPI who has sold securities in accordance with paragraph 4, the designated branch of an authorised dealer referred to in sub-paragraph (1A) of paragraph 3 may allow remittance of net sale/ maturity proceeds (after payment of taxes) or credit the net amount of sale/maturity proceeds of such securities to the Foreign Currency Account or Special Non-resident Rupee Account of the RFPI maintained in accordance with the provisions of paragraph 2 of Schedule 2A.]

(*ii*) In the case of a Non-resident Indian [2][***] who has sold securities in accordance with paragraph 4, the net sale/maturity proceeds (after payment of taxes) of such securities, may be :

(*a*) credited only to NRSR account of the NRI investor where the payment for purchase of securities sold was made out of funds held in NRSR account, or

(*b*) credited, at the NRI [3][***] investor's option, to his/its NRO or NRSR account, where the payment for the purchase of the securities sold was made out of funds held in NRO account, or

(*c*) remitted abroad or at the NRI [3][***] investor's option, credited to his/its NRE/FCNR/NRO/NRSR/NRNR account, where the securities were purchased on repatriation basis in accordance with sub-paragraph (1) of paragraph 2 and the payment for purchase of the securities sold was made by inward remittance through normal banking channels or out of funds held in NRE/FCNR account.

[4][(*iii*) In the case of sale of Government dated securities by a Multilateral Development Bank, the net maturity proceeds (after payment of taxes) may be remitted abroad or credited to fund account opened with the prior permission of the Reserve Bank.]

[5][**SCHEDULE 6**

[*See* Regulation 5(5)]

INVESTMENT IN AN INDIAN VENTURE CAPITAL UNDERTAKING BY A REGISTERED FOREIGN VENTURE CAPITAL INVESTOR

Investment by Foreign Venture Capital Investor.

1. (1) A registered Foreign Venture Capital Investor (FVCI) may, through the Securities and Exchange Board of India, apply to the Reserve Bank for permission to invest in Indian Venture

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
2. Words "or an Overseas Corporate Body" omitted by the FEM [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, w.e.f. 3-10-2003.
3. Words "or OCB" omitted, *ibid.*
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2003, w.e.f. 27-10-2003.
5. Inserted by FEM (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2000, w.e.f. 26-12-2000.

Capital Undertaking (IVCU) or in a VCF or in a scheme floated by such VCFs. Permission may be granted by Reserve Bank subject to such terms and conditions as may be considered necessary.

(2) The registered FVCI permitted by Reserve Bank under sub-paragraph (1), may purchase equity/ equity linked instruments/debt/debt instruments, debentures of a IVCU or of a VCF through Initial Public Offer or Private Placement or in units of schemes/funds set up by a VCF. [1][The registered FVCI may invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes/funds set up by a VCF) by way of private arrangement/purchase from a third party, subject to the terms and conditions stipulated by the Reserve Bank from time to time. The registered FVCI may invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time, as well as the terms and conditions stipulated therein.]

(3) The amount of consideration for investment in VCFs/IVCUs shall be paid out of inward remittance from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorised dealer in India in accordance with Para 2.

Maintenance of account by the registered FVCI for investment in IVCUs/VCFs or schemes/funds set up by the VCFs.

2. The Reserve Bank may, on application, permit a FVCI which has received 'in principle' registration from SEBI to open a Foreign Currency Account and/or a Rupee Account with a designated branch of an authorised dealer with the following permissible transactions :

(*i*) Crediting inward remittance received through normal banking channels or the sale proceeds (net of taxes) of investments.

(*ii*) Making investment in accordance with the provisions of paragraph 1 above.

(*iii*) Transferring funds from the Foreign Currency Account of the FVCI to their own Rupee account.

(*iv*) Remitting funds from the Foreign Currency or rupee account subject to payment of applicable taxes.

(*v*) Meeting local expenses of the FVCI.

Forward Cover.

3. Authorised Dealers may offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments will be deducted from the eligible cover.

Valuation of Investments.

4. The FVCI may acquire by purchase or otherwise or sell shares/convertible debentures/units or any other investment held by it in the IVCUs or VCFs or schemes/funds set up by the VCFs at a price that is mutually acceptable to the buyer and the seller/issuer. The FVCI may also receive the proceeds arising of the liquidation of VCFs or schemes/funds set up by the VCFs.

Adherence to SEBI Guidelines

5. FVCIs shall abide by the relevant regulations/guidelines issued by Securities and Exchange Board.]

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 19-3-2012.

FORM TS 1

Application for transfer of shares of a company registered in India by a non-resident to a person resident in India

Instructions :

1. The application should be completed in duplicate and submitted to the concerned Regional Office of Reserve Bank under whose jurisdiction the Head/Registered Office of the company, whose shares are to be transferred, is situated if the transferor is a foreign company/foreign national resident outside India.
2. The application may be signed either by the transferor or the transferee attaching therewith consent in writing of the other party or a copy of the sale/purchase agreement.

Documentation :

1. Photocopies of Reserve Bank's approval(s) for acquiring and holding shares by the transferor, if specific approval was granted by Reserve Bank for holding/acquisition of shares, if applicable.
2. In case the shares proposed to be transferred are listed on a Stock Exchange, a certificate from a Chartered Accountant certifying the average quotation (average of daily high and low) for one week preceding the date of application.
3. In case of unlisted/thinly traded shares, valuation of the shares on basis of any valuation methodology in vogue, if the total consideration is upto Rs. 20 lakhs.
4. In case of unlisted/thinly traded shares where the total consideration exceeds Rs. 20 lakhs, two valuation certificates for the shares of the company, one from the statutory auditors of the company and the other from an independent Chartered Accountant/SEBI registered Category-I Merchant Banker.

Or

Documentary evidence showing Price Earnings (PE) and Book Value (BV) multiples of Bombay Stock Exchange National Index (BSEN) for the calendar month immediately preceding the date of application and a certificate showing the Earnings Per Share (EPS) and Net Asset Value (NAV) of the shares of the company as per the latest audited Balance Sheet.

1. Particulars of the transferor		
A. *If the transferor is a corporate body*		
(*i*) Name and address		
(*ii*) Place of incorporation		
(*iii*) Total shareholding in the investee company		
(*iv*) Particulars of Reserve Bank approval/s for acquiring/holding shares		
(*v*) Number and face value of the shares proposed to be sold/transferred		

B. *If the transferor is an individual* (*i*) Full name and address (*ii*) Number of shares held in the Indian company (*iii*) Reserve Bank's approval number/s and date(s) (if any) for acquiring/holding the shares (*iv*) Number and face value of shares; proposed to be sold/transferred		
2. Particulars of the Indian company whose shares are to be sold/transferred (*i*) Name and address (*ii*) Place of incorporation (*iii*) Total paid-up capital (*a*) Equity	*No. of shares*	*Amount*
(*b*) Preference		
(*c*) Held by		

	Equity		*Preference*	
(*i*) *Non-resident*:	*No. of shares*	*Percentage to total paid-up equity shares*	*No. of shares*	*Percentage to total paid-up preference shares*
(*a*) Foreign nationals/Corporate bodies [other than included in (*b*) below]				
(*b*) NRIs/Overseas corporate bodies predominantly owned by NRIs				
(*ii*) *Residents*:				
(*a*) Indian Promoters				
(*b*) Others				
Total				

3. Particulars of the buyers/transferee : (*i*) Name and address (*ii*) Place of incorporation		
4. Whether the shares are quoted on a recognised Stock Exchange ?	Yes/No	
(*i*) If the shares are quoted on the Stock Exchange, whether the sale is proposed to be effected on the floor of the Stock Exchange to the general public at the prevailing market price ?	Yes/No	
(*ii*) If the sale (of the quoted share) is by way of private arrangement, please furnish the following : (*a*) the average of quotations (average of daily high and low) for one week preceding the date of application duly certified by a Chartered Accountant.[Item 2 under Documentation] (*b*) the proposed sale price		
5. If the sale/transfer is of non-listed as well as listed but not regularly traded shares, the proposed sale price [to be supported by a Chartered Accountant's certificate as indicated in Item 4 under Documentation]		
6. Whether the transferor/transferee requires any permission under the Companies Act/MRTP Act. If so, whether such permission has been received from the appropriate authority.		
7. Reason for the proposed sale/transfer of shares.		
8. Any other information which the applicant wishes to furnish in support of this application.		

I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief.

Place :................

Date :..................

....

(Stamp and signature of the transferor/transferee as the case may be)

ount

nce

centage of total paid-up preference shares

[1][SCHEDULE 7

[*See* Regulations 5(8) & 13]

INDIAN DEPOSITORY RECEIPTS BY ELIGIBLE COMPANIES RESIDENT OUTSIDE INDIA

1. Issue of IDRs : Eligible companies resident outside India may issue Indian Depository Receipts (IDRs) through a Domestic Depository, to persons resident in India and outside India, subject to the following conditions:—

(*a*) the issue of IDRs is in compliance with the Companies (Issue of Indian Depository Receipts) Rules, 2004, as amended from time to time.

(*b*) the issue is in compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time.

(*c*) any issue of IDRs by financial/banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulator(s).

(*d*) IDRs shall be denominated in Indian Rupees only.

(*e*) the proceeds of the issue of IDRs shall be immediately repatriated outside India by the eligible companies issuing such IDRs.

2. Purchase/sale of IDRs : A SEBI registered FII including SEBI approved sub-accounts of the FIIs [2][or a Registered Foreign Portfolio Investor registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014] or an NRI may purchase, hold or sell IDRs, subject to the following terms and conditions:

(*a*) NRIs may invest in the IDRs out of funds held in their NRE/FCNR(B) account, maintained with an Authorised Dealer/Authorised bank.

[3][(*b*) Limited two way fungibility of IDRs shall be permissible subject to the terms and conditions stipulated by Reserve Bank in this regard from time to time.]

(*c*) IDRs shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue.

(*d*) Redemption/conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with sub-regulation (7) of regulation 22, of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.]

[4][SCHEDULE 8

[*See* Regulation 5(7A)]

SCHEME FOR INVESTMENT BY QUALIFIED FOREIGN INVESTORS IN EQUITY SHARES

Eligible Investors

1. The Schedule shall be applicable to Qualified Foreign Investors (QFIs) as defined in these regulations.

2. Eligible instruments and eligible transactions

(*a*) *Purchase:* QFIs shall be permitted to invest through SEBI registered Qualified Depository Participants (QDPs)—

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.
2. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014, w.e.f. 19-3-2014.
3. Substituted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.r.e.f. 28-8-2012. Prior to its substitution, clause (*b*), read as under:
   "(*b*) IDRs shall not be automatically fungible into underlying equity shares of the issuing company."
4. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Sixth Amendment) Regulations, 2012, w.e.f. 19-10-2012.

(i) in equity shares of listed Indian companies through SEBI registered stock brokers on recognized stock exchanges in India.

(ii) in equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines/regulations.

(iii) equity shares by way of rights shares, bonus shares or equity shares on account of stock split/consolidation or equity shares on account of amalgamation, demerger or such corporate actions.

(b) *Sale* : QFIs shall be allowed to sell the equity shares so acquired by way of sale

(i) Through recognized brokers on recognized stock exchanges in India; or

(ii) In an open offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or

(iii) In an open offer in accordance with the SEBI (Delisting of Securities) Guidelines, 2009; or

(iv) Through buyback of shares by a listed Indian company in accordance with the SEBI (Buyback) Regulations, 1998.

Pricing

3. The pricing of all eligible transactions and investment in all eligible instruments by QFIs under this scheme shall be in accordance with the relevant and applicable SEBI guidelines only.

Mode of payment/repatriation

4. For QFI investments under this scheme open a single non-interest bearing Rupee Account with an AD Category-I bank in India, for the limited purpose of routing the receipt and payment for transactions relating to purchase and sale of equity shares of listed Indian companies subject to the following conditions :

(a) The account shall be funded by inward remittance through normal banking channel and by credit of the sale/redemption/buyback proceeds (net of taxes) and on account of interest payment/dividend on the eligible securities for QFIs.

(b) The funds in this account shall be utilized for purchase of eligible securities for QFIs or for remittance (net of taxes) outside India.

(c) The QDP will operate such non-interest bearing Rupee Accounts on behalf of the QFIs and at the instructions of the QFIs.

Demat accounts

5. QFIs would be allowed to open a dedicated demat account with a QDP in India for investment in equity shares under the scheme. It is clarified that each QFI shall maintain a single demat account with a QDP for all investments in eligible securities for QFIs in India.

Limits and its monitoring

6. The individual and aggregate investment limits for the QFIs shall be 5 per cent and 10 per cent respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme for foreign investment in India. Further, wherever there are composite sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps.

The onus of monitoring and compliance of these limits shall remain jointly and severally with the respective QFIs, DPs and the respective Indian companies (receiving such investment).

7. Other conditions

(i) *Eligibility* - QFI would have to meet eligibility criteria as prescribed by SEBI from time to time.

(ii) *Know Your Customer (KYC)* - QDPs will ensure KYC of the QFIs as per the norms prescribed by SEBI. AD Category-I banks will also ensure KYC of the QFIs for opening and maintenance of the single non-interest bearing Rupee accounts as per the extant norms.

(iii) *Permissible currencies* - QFIs will remit foreign inward remittance through normal banking channel in any permitted currency (freely convertible) directly into the single non-interest bearing Rupee account of the QFI maintained with an AD Category-I bank.

Reporting

8. In addition to the reporting to SEBI as may be prescribed by them, QDPs and AD Category-I banks (maintaining QFI accounts) will also ensure reporting to the Reserve Bank of India in a manner and format as prescribed by the Reserve Bank of India from time to time.]

[1][SCHEDULE 9

[*See* Regulation 5(9)]

SCHEME FOR ACQUISITION/TRANSFER BY A PERSON RESIDENT OUTSIDE INDIA OF CAPITAL CONTRIBUTION OR PROFIT SHARE OF LIMITED LIABILITY PARTNERSHIPS (LLPs)

The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.

1. Eligible Investors

A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, the following persons shall not be eligible to invest in LLPs:

(*i*) a citizen/entity of Pakistan and Bangladesh or

(*ii*) a SEBI registered Foreign Institutional Investor (FII) or

(*iii*) a SEBI registered Foreign Venture Capital Investor (FVCI) or

(*iv*) a SEBI registered Qualified Foreign Investor (QFI) or

(*v*) a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 (RFPI).

2. Eligibility of LLP for accepting foreign Investment

(*i*) A LLP, existing or new, operating in sectors/activities where 100% FDI is allowed under the automatic route of FDI Scheme would be eligible to receive FDI. For ascertaining such sectors, reference shall be made to Annex B to Schedule 1 of Notification No. FEMA 20/2000-RB, dated 3rd May, 2000 as amended from time to time.

(*ii*) A LLP engaged in following sectors/activities shall not be eligible to accept (FDI):

(*a*) Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects', etc.); or

(*b*) Sectors eligible to accept less than 100% FDI under automatic route; or

(*c*) Sectors eligible to accept FDI under Government Approval route; or

(*d*) Agricultural/plantation activity and print media; or

(*e*) Sectors ineligible to accept FDI i.e. any sector which is prohibited under extant FDI policy (Annex A to Schedule 1 to Notification No. FEMA 20/2000-RB, dated 3rd May, 2000) as well as sectors/activities prohibited in terms of Regulation 4(b) to Notification No. FEMA 1/2000-RB, dated 3rd May, 2000 as amended from time to time.

3. Eligible investment

Contribution to the capital of an LLP would be an eligible investment under the scheme.

Note : Investment by way of 'profit share' will fall under the category of reinvestment of earnings.

4. Entry Route

FDI in a LLP shall require prior Government/FIPB approval.

1. Inserted by the FEM (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2014, w.r.e.f. 20-5-2014.

Any form of foreign investment in a LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval.

5. Pricing

FDI in a LLP either by way of capital contribution or by way of acquisition/transfer of profit shares, would have to be more than or equal to the fair price as worked out with 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 shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

In case of transfer of capital contribution/profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution/profit share of an LLP. Further, in case of transfer of capital contribution/profit share from a non-resident to resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution/profit share of an LLP.

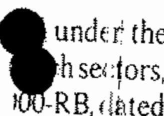
6. Mode of payment for an eligible investor

Payment by an eligible investor towards capital contribution of LLPs will be allowed only by way of cash consideration to be received—

(*i*) by way of inward remittance through normal banking channels; or

(*ii*) by debit to NRE/FCNR(B) account of the person concerned, maintained with an AD Category-I bank.

7. Reporting



(*i*) LLPs shall report to the Regional Office concerned of the Reserve Bank, the details of the receipt of the amount of consideration for capital contribution and 'profit shares' in Form FOREIGN DIRECT INVESTMENT-LLP(I) as specified by Reserve Bank from time to time, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor, through an AD Category-I bank, and valuation certificate (as per paragraph 4 above) as regards pricing at the earliest but not later than 30 days from the date of receipt of the amount of consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.

(*ii*) The AD Category-I bank in India, receiving the remittance should obtain a KYC report in respect of the foreign investor from the overseas bank remitting the amount.

(*iii*) Disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall required to be reported within 60 days from the date of receipt of funds in Form FOREIGN DIRECT INVESTMENT-LLP(II) as specified by Reserve Bank from time to time.

8. Downstream investment

(*a*) An Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment) will be permitted to make downstream investment in an LLP only if both, the company as well as the LLP, are operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions. Onus shall be on the LLP accepting investment from Indian Company registered under the provisions of the Companies Act, as applicable to ensure compliance with downstream requirement as stated above.

(*b*) A LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.

9. Other Conditions

(*i*) In case an LLP with FDI has a body corporate as a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of section 7 of the Limited Liability Partnership Act, 2008, such a body corporate should only be a company registered in India under the provisions of the Companies Act, as applicable and not any other body, such as an LLP or a Trust. For such LLPs, the designated partner "resident in India", as defined under the *'Explanation'* to section 7(1) of the Limited Liability Partnership Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under section 2(*v*)(*i*) of the Foreign Exchange Management Act, 1999.

(*ii*) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(*iii*) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.

(*iv*) LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).

10. The LLP which have received foreign investment between May 20, 2011 to the date of issuance of instructions issued in this regard by Reserve Bank shall comply with the reporting requirement in respect of FDI within 30 or 60 days, as applicable, from the date of issuance of these instructions.

•• •• ••

FORM FOREIGN DIRECT INVESTMENT - LLP(I)

Report by the Limited Liability Partnerships (LLPs) receiving amount of consideration for capital contribution and acquisition of profit shares under the Scheme

(To be filed by the LLP through its Authorised Dealer Category-I bank, with the Regional Office of the Reserve Bank under whose jurisdiction the Registered Office of the Limited Liability Partnership *making the declaration is situated, not later than 30 days from the date of receipt of the amount of consideration)*

Permanent Account Number (PAN) of the investee LLP given by the IT Department	☐☐☐☐☐☐☐☐☐☐☐☐☐☐

No.	*Particulars*	*(In Block Letters)*
1.	Name of the Limited Liability Partnership Address of the Registered Office	
	State	
	Fax	

	Telephone	
	e-mail	
	Identification No. (LLPIN) issued by Office of Registrar for LLP	
	Date of Registration	
	Whether existing LLP or new LLP	Existing LLP/New LLP (strike off whichever is not applicable)
	If existing LLP, give registration number allotted by RBI for FDI, if any	
2.	**Details of the foreign investor**	
	Name Designated Partner Identification No. (DPIN) : Address Country Constitution/Nature of the investing Entity [Specify whether 1. Individual 2. LLP 3. Company 4. Foreign Trust 5. Private Equity Fund 6. Pension/Provident Fund 7. Sovereign Wealth Fund (SWF)[1] 8. Partnership/Proprietorship Firm	

1. SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

	9. Financial Institution 10. NRIs/PIO 11. Others (please specify)]		
3.	Date of receipt of funds		
4.	Amount	In foreign currency	In Indian Rupees
5.	Activity of the LLP		
	(i) Description of the main business activity NIC Code		
	(ii) It is confirmed that 100% FDI is allowed under automatic route as per FDI policy without any FDI-linked performance related conditions	Yes/No	
	(iii) Details of Government Approval (ref. No. of approval letter and date) [copy enclosed]		
6.	Name of the AD bank through whom the remittance is received		
7.	Address of the AD bank		

(Authorised signatory of the investee LLP)	(Authorised signatory of the AD bank)
(Stamp)	(Stamp)

FOR USE OF THE RESERVE BANK ONLY:

Unique Identification Number for the remittance received: [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE LIMITED LIABILITY PARTNERSHIP : ***(Delete whichever is not applicable and authenticate)***

We hereby declare that :

1. We comply with the procedure for capital contribution and profit shares as laid down under the Notification No. FEMA 20/2000-RB, dated 3rd May, 2000, as amended from time to time.

2. Capital contribution/profit shares have been issued to the non-resident investor in terms of FIPB approval

No. .... dated ....

3. We enclose the following documents in compliance with to Notification No. FEMA 20/2000-RB, dated 3rd May, 2000 :

(i) A certificate from our designated partner certifying that—

(a) all the requirements of the LLP Act, 2008 have been complied with;

(b) terms and conditions of the Government approval, have been complied with;

(c) the LLP is eligible to issue capital contribution/profit shares under these Regulations; and

(d) the LLP has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with Notification No. FEMA 20/2000-RB, dated 3rd May, 2000.

(ii) A certificate from the Chartered Accountant/Cost Accountant/approved valuer from the panel maintained by the Central Government, indicating the manner of arriving at the fair price of the capital contribution/profit shares issued to the persons resident outside India.

4. The foreign investment received and reported now will be utilized in compliance with the provisions of the Prevention of Money Laundering Act, 2002 (PMLA) and Unlawful Activities (Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations.

5. Unique Identification Numbers given for all the remittances received so far as consideration for capital contribution and acquisition of profit shares (details as above), by the Reserve Bank.

R														
R														

(Signature of the Applicant)* : ....

(Name in Block Letters) : ....

(Designation of the signatory): ....

Place :

Date :

(*To be signed by Designated Partner/Authorised Signatory of the LLP)

CERTIFICATE TO BE FILED BY THE DESIGNATED PARTNER/AUTHORISED SIGNATORY OF THE LIMITED LIABILITY PARTNERSHIP ACCEPTING THE INVESTMENT

In respect of the abovementioned details, we certify the following:-

1. All the requirements of the Limited Liability Partnership Act, 2008 have been complied with.
2. Terms and conditions of the Government approval, if any, have been complied with.
3. The LLP is eligible to issue capital contribution/profit shares under these Regulations.

4. The LLP has all original certificates issued by AD Category-I banks in India, evidencing receipt of amount of consideration in accordance with provisions of Notification No. FEMA 20/2000-RB, dated May 3, 2000.

(Name & Signature of the Designated Partner/ Authorised Signatory of the LLP)

(Seal)

FOR USE OF THE RESERVE BANK ONLY:

Registration Number for the FOREIGN DIRECT INVESTMENT-LLP : ☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Unique Identification Number allotted to the Company at the time of reporting receipt of remittance R☐☐☐☐☐☐☐☐☐☐☐☐☐

	Form FOREIGN DIRECT INVESTMENT-LLP(II)	
	Declaration regarding transfer of capital contribution/profit shares of a Limited Liability Partnership from resident to non-resident/non-resident to resident	
	(to be submitted to the Authorised Dealer Category-I bank branch in quadruplicate within 60 days from the date of receipt of funds)	
	The following documents are enclosed *For transfer of capital contribution/profit shares of a Limited Liability Partnership by a person resident in India* (*i*) Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document. (*ii*) The capital contribution/profit shareholding pattern of the investee LLP after the acquisition of capital contribution/profit shares by a person resident outside India. (*iii*) Certificate indicating fair value of shares from the Chartered Accountant/Cost Accountant/approved valuer from the panel maintained by the Central Government. (*iv*) Declaration from the buyer to the effect that he is eligible to acquire capital contribution/profit shares *i.e.*, necessary Government approval has been obtained by the buyer or seller and terms and conditions of the Government approval, the foreign investment limits mentioned therein as well as the pricing guidelines have been complied with. *Additional documents in respect of capital contribution/profit shares of an Limited Liability Partnership by a person resident outside India.* (*v*) No Objection/Tax Clearance Certificate from Income Tax Authority/Chartered Accountant/Cost Accountant/Company Secretary in practice.	
I	**Name of the Limited Liability Partnership**	
	Address (including e-mail, telephone Number, Fax No.)	

	Activity Identification No. (LLPIN)	
2	**Nature of transaction** *(Strike out whichever is not applicable)*	Transfer from resident to non-resident/ Transfer from non-resident to resident
3	**Name of the buyer**	
	Constitution/Nature of the investing Entity Specify whether 1. Individual 2. LLP 3. Company 4. Foreign Trust 5. Private Equity Fund 6. Pension/Provident Fund 7. Sovereign Wealth Fund (SWF[π]) 8. Partnership/Proprietorship firm 9. Financial Institution 10. NRIs/PIOs 11. Others	
	Date and Place of Incorporation	
	Address of the buyer (including e-mail, telephone number, Fax No.)	
5	**Name of the seller**	
	Constitution/Nature of the disinvesting partner Specify whether 1. Individual	

π SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

<table>
<tr><td></td><td colspan="5">2. LLP
3. Company
4. Foreign Trust
5. Private Equity Fund
6. Pension/Provident Fund
7. Sovereign Wealth Fund (SWF^π)
8. Partnership/Proprietorship firm
9. Financial Institution
10. NRIs/PIOs
11. Others</td><td></td></tr>
<tr><td></td><td colspan="5">Date and Place of Registration</td><td></td></tr>
<tr><td></td><td colspan="5">Address of the seller
(including e-mail, telephone Number, Fax No.)</td><td></td></tr>
<tr><td>6</td><td colspan="6">Particulars of earlier FIPB approvals</td></tr>
<tr><td>7</td><td colspan="6">Details regarding capital contribution or profit shares of a Limited Liability Partnership to be transferred</td></tr>
<tr><td></td><td colspan="2">Date of the transaction</td><td>Percentage of capital contribution/profit share</td><td>Value in Rs.</td><td>Negotiated Price for the transfer* in Rs.</td><td>Amount of consideration in Rs.</td></tr>
<tr><td></td><td colspan="2"></td><td></td><td></td><td></td><td></td></tr>
<tr><td>8</td><td>Foreign Investments in the Limited Liability Partnership</td><td colspan="2"></td><td colspan="2">Capital contribution/ profit shares</td><td>Percentage</td></tr>
<tr><td></td><td></td><td colspan="2">Before the transfer</td><td colspan="2"></td><td></td></tr>
<tr><td></td><td></td><td colspan="2">After the transfer</td><td colspan="2"></td><td></td></tr>
</table>

π SWF means a Government investment vehicle which is funded by foreign exchange assets, and which manages those assets separately from the official reserves of the monetary authorities.

Price as per Valuation guidelines* *Valuation report (certificate from the Chartered Accountant/Cost Accountant/approved valuer from the panel maintained by the Central Government to be attached)	

Declaration by the transferor/transferee

I/We hereby declare that :

(*i*) The particulars given above are true and correct to the best of my/our knowledge and belief.

(*ii*) I/We, was/were holding the capital contribution/profit shares of a Limited Liability Partnership as per foreign investment policy issued by the Government of India as well as notified under FEMA Regulations.

(*iii*) I/We, am/are eligible to acquire the capital contribution/profit shares of a Limited Liability Partnership in terms of the foreign investment policy issued by the Government of India as well as notified under FEMA Regulations.

(*iv*) The foreign investment limit as per Government approval and the pricing guidelines have been adhered to.

Signature of the Declarant or his duly authorised agent

Date:

Note:

In respect of the transfer of capital contribution/profit shares of a Limited Liability Partnership from resident to non-resident the declaration has to be signed by the non-resident buyer, and in respect of the transfer of capital contribution/profit shares of a Limited Liability Partnership from non-resident to resident the declaration has to be signed by the non-resident seller.

Certificate by the AD Bank Branch

It is certified that the application is complete in all respects.

The receipt/payment for the transaction are in accordance with FEMA Regulations/Reserve Bank guidelines.

Signature

Name and Designation of the Officer

Date : Name of the AD Bank Branch

AD Bank Branch Code

Partnership

sideration

anages those

ANNEXURE-P-3

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A

ILR (2004) II DELHI 530

CIVIL WRIT PETITION

B

FEDERATION OF ASSOCIATIONS OF MAHARASHTRA AND ORS. .....PETITIONERS

VERSUS

C

UNION OF INDIA AND ORS. .....RESPONDENTS

(SANJAY KISHAN KAUL J)

CIVIL WRIT PETITION : 9568-70/2003 DATE OF DECISION: 22.11.2004

D

Foreign Direct Investment (FDI) – 'Cash and carry wholesale trade' – FDI not permitted in retail trade – Permitted in wholesale trade on cash and carry besis – Petitioners alleged that under garb of clarification dated 05/10.12.2002 said policy amended; FDI permitted In retail trade through business to business sale (B2B) – Impugned clarification – Challenged – Policy in question framed in year 1977 in form of guidelines – Government of India vide clarification in question clarified that (B2B) sales permissible and cannot be termed as retail trade – Definition of 'wholesale' and 'retail trade' as adopted by World Trade Organisation (WTO) instead of tradition definitions relied upon – Government can amend its policy – Nothing precludes Government from issuing clarification even if in nature of amendment – Clarification in question issue after discussion at length at various levels – Policy framer i.e. concerned Ministry itself issued clarification/modification – With expansion of International commerce, traditional definition of 'wholesale' or 'retail' cannot be accepted – B2B trade forms part of wholesale trading not fall within definition of 'retail'

E F G H I

The aforesaid plea, in my considered view, is spacious in its very nature because once it is recognised that the Government can amend its policy, nothing precludes the Government from issuing a clarification even if it is read in the nature of an amendment of the policy. The policy was formulated and the

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A question arose as to how the Government would understand the policy. Representations were made by the FDI investors for the said purpose and after examining the matter, clarification was issued. The original records in this behalf have been produced and a perusal of the same shows that the matter B has been discussed at length at various levels. It is not, thus, a hurried response without application of mind or where the discussion and consultation has not taken place at the highest level. It is not important that the letter dated 05/10.12.2002 C has been issued by the Under Secretary to the GOI. The Under Secretary to the GOI has only issued the letter on behalf of the Ministry of Commerce and Industry, which is the parent Ministry. I fail to appreciate how the Government can be D precluded from clarifying or amending its policy which by its very nature is executive in character.

The interpretation of the Government is also not out of thin hair. It is trite to say that with the expansion of international E commerce and trade, there are certain internationally understood concepts, which have come into play. Is the Court to look to the traditional definition of what may be wholesale or retail as may be considered in the dictionaries and in the country earlier or is the Court to accept the definition adopted by the F Government on international practice? The Government's view is based on the WTO definition of wholesale trade. The Government can hardly be faulted on this account and it is not for the Court to go into this question.

G It has to be appreciated that B2B sales is a concept which internationally today carries a different meaning as is apparent from the various judgments and definitions given. This has also an impact on what is meant by wholesale trade and retail trade H in the international parlance. Thus, B2B trade forming a part of wholesale trading was a later development to the traditional concept of what is understood by retail and wholesale trade. The traditional concept of wholesale trade was, thus, expanded I and the emphasis on the quantity of sale went down.

(Para 56, 59 and 60)

Important Issue Involved: In the era of globalization and economic reforms, the traditional definition of 'wholesale' and 'retail' as interpreted by various judicial pronouncement

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A cannot be accepted particularly when definitions as adopted by WTO are internationaly accepted. The Government can amend its policy even if it is in the nature of amendment. 'Business to business' sale is part of the 'wholesale trading'.

B **APPEARANCES**

FOR THE PETITIONERS : Mr. T.R. Andhyarujina, Senior Advocate with Mr. Gaurav Joshi, Mr. Syed Naqvi, Mr. R.K. Krishnamurthi and Mr. Ashish Chugh, Advocates.

C

FOR THE RESPONDENTS : Mr. P.P. Malhotra, ASG with Anil Nag and Mr. A.K. Sinha, Advocates for respondent No. 1 to 3.

D

Mr. Soli J. Sorabjee, Senior Advocate with Mr. Ajay Bahl and Mr. N. Ganpathy, Advocates for respondent No. 4.

E

Mr. C.A. Sundaram, Senior Advocate with Mr. Shirin Khajuria and Ms. Ruchi Khurana, Advocate for respondent No. 5.

F

Mr. Mukul Rohtagi, Senior Advocate with Mr. T.S. Murthy and Mr. Zubin Pratap, Advocates for respondents No. 6 and 7.

G

Mr. Rajiv Nayyar, Senior Advocate with Mr. S. Kumar, Advocate for respondents No. 8.

H

Mr. Manish Singhvi, Advocate for respondent No. 9.

CASES REFERRED TO :

I

1. *State of Punjab V Nestle India Ltd. and Anr.*, (2004) 269 ITR 97
2. *Federation of Railway Officers Association and Ors. V Union of India*, (2003) 4 SCC 289

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3. *BALCO Employees' Union (Regd.) V Union of India and Ors.*, (2002) 2 SCC 333
4. *Wollworths Ltd. V Campbells Cash and Carry P/L and Ors.*, (1996) 92 LGER 244

B

5. *Collector of Central Excise V Andhar Sugar Ltd.*, 1989 Supp. (1) SCC 144
6. *State of Tamil Nadu V Mabi Traders*, 1989(1) SCC 724

C

7. *Rai Sahib Ram Jawaya Kapur and Ors. V The State of Punjab*, AIR 1955 SC 549
8. *Collector of Bombay V Municipal Corporation of the City of Bombay*, (1952) 3 SCR 43

D

9. *Roland Elec. Co. V Walling*, 326 US 657 (1946)

RESULT : Petition dismissed.

Sanjay Kishan Kaul, J.

E

1. The liberalization and opening of the Indian economy has seen foreign investment flow into different sectors. Such inflow is, however, not unregulated and it is restrictive in certain areas of business. The Government of India (for short, 'GOI') has in its wisdom not permitted foreign direct investment (for short, 'FDI') in retail trade. On this, there is no dispute. FDI has been permitted in wholesale trade on cash and carry basis. Over this also, there is no dispute. The present writ petition, however, involves the question of interpreting of this concept of 'cash and carry wholesale trade'.

F

G

2. The petitioners contend that under an amendment to the policy under the garb of a clarification dated 05/10.12.2002, in fact, retail trade has been permitted clothing it with the concept of wholesale cash and carry trade through business to business sales. On the other hand, the Union of India (for short, 'UOI') as well as the private respondents contend that what has been permitted is only wholesale cash and carry trade as understood in the international parlance.

H

3. Petitioner No. 1, who claims to be an apex trade association having membership from retailers and wholesalers in different parts of India, is seeking to agitate the grievance on behalf of this class of persons. The respondents, apart from UOI and Foreign Investment Promotion Board (for short, 'FIPB') also include private respondents No. 4 to 8 against whom the grievance of such retail trade is being made by the petitioners.

I

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A 4. The policy in question is stated to have been framed in the year 1997 in the form of guidelines meant to assist FIPB to consider the proposals. In terms of para 8 of the guidelines in respect of trading business, 100% FDI is permitted in case of trading companies for cash and carry wholesale trading and FDI up to 100% is also permitted for E-Commerce activities subject to certain conditions, but such companies are to engage only in business to business (for short, 'B2B sales') E-Commerce and not in retail trading. This aspect has been referred to since the concept of B2B trading is really the main issue, which arises for consideration in the present dispute. A Press Release is also stated to have been issued on 05.06.2000 stating that the GOI has received representations from various quarters against permitting FDI in retail trading and that under the current policy, such FDI in retail trading is not permissible.

5. The petitioners have also relied upon other documents including the report of the Planning Commission made in May, 2002 recommending against FDI in retail sector. The basis for this is stated to be the fact that retail sector in India is dispersed, widespread, labour intensive and disorganized.

6. Respondent No. 4 is M/s. Metro Cash & Carry Pvt. Ltd., which is an Indian company; while respondent No. 5 is M/s. Metro Cash & Carry GmbH, which is a foreign Corporation. This group was granted permission vide the approval dated 05.12.2000 for establishing a State of the Art Cash and Carry Complex for food and non-food products at urban locations. The approval was, however, made subject to the condition that the company would need to ensure that selling of the products stocked by it is to retailers who would possess sales-tax registration and not to consumers. A Press Release is also stated to have been issued again thereafter on account of certain reports in a section of the Press dealing with this permission. This Press Release clarified that there is no retail trade permitted and cash and carry wholesale business is for sale to retailers having valid sales-tax registration. The press report is as under :

"NO FDI PERMITTED IN RETAIL TRADING -
PRESS NOTE

There have been reports in a section of the press recently conveying an impression that FDI in retail trading has been permitted in some cases. It is clarified that under the present

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A policy. FDI is not permitted to domestic retail trading. and no such permission has been given recently.

It may be recalled that prior to 1997, when the current policy was laid down, approvals had been given to two companies B for FDI in retail trading. The first approval was given to Nanz Foods Products in 1992. followed by Spencer and Company Ltd. in 1996. Subsequently a policy decision was taken not to allow FDI in retail trading and such proposals are not being approved.

C

The present policy only permits FDI up to 100 per cent in Cash and Carry wholesale trading. which is quite distinct from retail trading, involving sale to individual customers through normal retail shopping outlets.

D

In this context. it would be useful to reiterate that cash and carry wholesale business and retail trading are qualitatively and distinctly different. The wholesale trader sells his goods to retailers and not to consumers, and retailers are identified E as those having a valid Sales Tax Registration. The cash and carry wholesaler cannot open retail shops to sell to consumers directly. The advantages of cash and carry wholesale business are quick delivery of goods to retailers F and saving of time and money in indenting and maintaining of warehousing facilities, thus, giving them the benefit of just-in-time supplies.

The approval given to Metro Cash and Carry, GmbH G recently, which have received extensive press coverage is for setting up of state-of-the art cash and carry wholesale complexes. The company is not permitted to have retail outlets or sell products to consumers directly.

H It may be added that approval for cash and carry wholesale trading have been given in the past also. Any violation of the approval terms renders the company liable to action."

7. The petitioners allege that the aforesaid is being violated in I terms of the clarification issued to respondent No. 4 vide letter dated 05/10.12.2002 on a representation received by the said respondent. One concession, which was made, was that the retailer may not have only a sales-tax registration, but a valid licence would also suffice. On this aspect, really there is no quarrel, but it is the second aspect of this

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A clarification with which the petitioners are really aggrieved. The second part of this clarification states that B2B sales is permissible under the policy, which cannot be termed as retail trade. The said clarification/ letter is as under:

B "BY SPEED POST / AIR MAIL
Amendment No. : 1

NO. FC.II. : 563(2000)/651(2000)-Amend
Government of India
C Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Secretariat for Industrial Assistance
Foreign Collaboration - II Section

D New Delhi, the December 5/10th, 2002

To

M/s. Metro Cash & Carry India Pvt. Ltd.
E 10th Floor, Vayudooth Chambers,
15/16, M.G. Road,
BANGLORE - 550 001.

SUBJECT : Application for foreign collabotration (SIA
F Regn. No. FC.I. 651 dated 25/10/2000)

REFERENCE: This Ministry's approval letter No. FC.II. : 563(2000)/651/(2000)dated 05/12/2000.

Dear Sir,

G I am directed to refer to your letter dated 22/02/2001, 13.9.2001, 23.7.2002 and 29.10.2002 on the above mentioned subject with reference to this Ministry's letter referred to above and to clarify that the Company can supply
H to distributors, wholesalers and retailers having valid trade licences /sales-tax registration. Business-to-business sale is permissible under the extant policy, which cannot be terms as retail trade.

I 2. Further, it is noted that a new Indian company in the name & style of M/s. Metro Cash & Cary India Private Limited has been incorporated to implement the project. Accordingly, the approval letter is hereby transferred in the name of the new company. This new company shall

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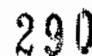

A abide by the terms and conditions stipulated in the above referred approval letter.

3. All other terms and conditions of the letters referred above shall remain unchanged.

B 4. Kindly acknowledge the receipt of this letter.

Yours faithfully,

sd/-

C (PRAMILA RAGHVENDRAN)
UNDER SECY. TO THE GOVT. OF INDIA"

8. The aforesaid clarification is stated to be really an amendment by the petitioners by reference to the document itself, which lists the D same as Amendment No. 1. The reference given at the top of the letter is to the approval No. This B2B sales is alleged by the petitioners to be amounting to a permission to dealing of goods unconnected with business and sub-version of the policy since this B2B sales concept formed only E a part of the policy in respect of E-Commerce trade specifically. To substantiate this contention, a reference has also been made to the licences issued to respondent No. 4 by the Assistant Drug Controller as also for liquor which are retail licences.

F **9.** A number of invoices have also been filed to show that respondent No. 4 is, in fact, making sales of individual items of small numbers not related to the business of the purchasers including to Show Wagon. This is alleged to be not sale to retailers.

G **10.** It was, thus, submitted by learned senior counsel for the petitioners that the concepts of retail and wholesale trade are totally different, especially as understood in our country and that is this definition, which would have to apply to the policy. Learned senior counsel referred to the Black's Law Dictionary, Seventh Edition where H the word 'retail', 'retailer' and 'wholesaler' are defined as under.

> "retail. n. The sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing, - retail, vb. - retail, adj., Cf. WHOLESALE."
>
> I " retailer, n. A person or entity engaged in the business of selling personal property to the public or to consumers, as opposed to selling to those who intend to resell the items."

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A " wholesaler. One who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell to the ultimate consumer."

11. It was, thus, emphasized that the wholesaler is not a consumer, but who buys in large quantities and sells them in smaller quantities to retailers. Thus, the lack of self-consumption and the quantity of goods were both stated to be important aspects.

12. A reference was also made to The Concise Commercial Dictionary by P.G. Osborn, First Indian Reprint 1997 where 'retail' and 'wholesale' businesses were defined as under:

"retail. The sale of goods to the consumer, usually in small quantities in shops, saloons, etc. See also WHOLESALE"

"wholesale. The selling of articles or goods in large quantities to be sold retail. A wholesale shop is one occupied by a wholesaler where goods are kept for sale wholesale to customers resorting to the premises. (Shops Act, 1950)."

13. Learned senior counsel also sought to derive strength from the definition of 'wholesaler' in Section 2(x) of The Monopolies and Restrictive Trade Practices Act, 1969, which is as under:

"wholesaler", in relation to the sale of any goods, means a person who [sells the goods, either in bulk or in the large quantities, to any person for the purposes of re-sale, whether in bulk or in the same or smaller quantities]:"

14. Learned senior counsel emphasized that the Press Release of 07.02.2001 did not carve out any exception for B2B trade and, in fact, the then Minister for Commerce and Industry in the letter dated 28.03.2001 addressed to a Member of Parliament had emphasized the factum of sale of products to retailers, who possess sales-tax registration with reference to the case of respondents No. 4 and 5.

15. The representation made dated 13.09.2001 to the Chairman, FIPB had emphasized that the Metro's business concept was based on selling not to consumers, but to registered business customers and, thus, sales-tax registration alone should not be applied to the transaction, which would deprive a large section of small potential beneficiaries of the opportunity to compete more effectively with big players by becoming a Metro consumer. Thus, it was requested that any other business

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A registration should also be permitted as a criteria. In the subsequent communication dated 23.07.2002 of respondent No. 4, a further clarification was sought on the basis that the GOI had allowed B2B trading with 100% foreign participation on the Internet and this is what precisely Metro intended to do. It is this which has resulted in the B impugned clarification/amendment.

16. Learned senior counsel further sought to rely on an enquiry held by the Karnataka Government, which had come to the conclusion that there was violation of the original conditions laid down by the C Government. This finding has been arrived at in terms of a communication dated 03.02.2004 addressed to the GOI by the Government of Karnataka. It may, however, be clarified at this stage that the GOI in the present proceedings has taken a categorical stand D that what the private respondents are doing is permissible under the policy.

17. Learned senior counsel also sought to emphasise the fact that a categorical averment has been made in the writ petition in sub-para (g) E of para 16 that this clarification / amendment had been issued without consulting the FIPB and has been issued unilaterally by the Under Secretary at the instance of the Chairman, FIPB. This fact has not been denied in the counter affidavit of UOI specifically and all that has been F stated is that B2B sales concept is within the scope of the approval as sales at wholesale level are permissible under the policy.

18. The GOI also carried out its own enquiry based on certain allegations of violation of conditions by respondents No. 4 and 5 and a G finding was arrived at in favour of the private respondents. It may be noted that the definition of wholesale and retail trade as adopted by the World Trade Organisation (for short, 'WTO') was relied upon. Since this is a finding arrived at by the GOI itself, which has resulted in the stand being taken in the present proceedings, it is relevant to reproduce H the same:

"GOVERNMENT OF INDIA

BRIEF ASSESSMENT BASED ON THE FINDINGS OF THE INQUIRY CONDUCTED INTO THE I ALLEGATIONS OF VIOLATION OF CONDITIONS OF APPROVAL GRANTED TO METRO CASH & CARRY INDIA LTD.

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A On receipt of reports alleging non-compliance of the approval conditions by M/s. Metro Cash & Carry India Pvt. Ltd., the Government of India, Department of Industrial Policy & Promotion, conducted a fact finding inquiry into the allegations.

B

2. The Company informed that it has a stringent customer validation process to ensure that only bona fide business customers purchase goods for their business needs from its distribution centres. The Company also said that it has a continuous review process for verifying the continuance of the business, checking violations of terms and conditions of the card. etc. On misuse or irregularities being noticed the card is blocked and the customer is not allowed entry. The Company has also prescribed minimum buy quantities for different products.

C

D

3. The Inquiry observed that:-

E

a) registered businesses which include traders, service providers, offices, restaurants, etc. were enrolled as Members, and only registered Members were allowed to purchase goods from the wholesale cash and carry complex.

F

b) the company is carrying out its operations substantially within the scope of the government approval, which is according to the prevalent policy governing FDI in trading.

G

c) by February, 2004, the share of value of sales for transactions below Rs.1,000/- had fallen to just 0.2% of total sales. It was 7.5% in October, 2003 when the company commenced operations but gradually stabilised.

H

4. Based on details analysis of the Inquiry, it was found that a substantial majority of registered members of Metro Cash & Carry complex would fall in the category of either traders of entities that would use the purchased goods for further processing (viz. Retailers, mini-marts, super-marts, hotels, restaurants).

I

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A 5. It was also noted that while there is no clear cut demarcation between wholesale and retail sales, it can be concluded that direct sales to the ultimate consumer would constitute retail trade whereas sale to an entity which in turn sells it to the ultimate consumer or to another retailer B or uses it for further processing can be classified as wholesale trade. In fact, sales in larger quantities to consumers would also, as per common practice, qualify as wholesale. However, the size of quantity would depend on C the nature of the product.

6. Department of Commerce, which is the Administrative Ministry for the Metro Cash & Carry Project, have confirmed the definition adopted by the World Trade D Organisation (WTO), according to which:

> "Wholesaling consists of the sale of goods/ merchandise to retailers, to industrial, commercial, institutional, or other professional business users or E to other wholesalers and related subordinated services."

> "Retailing services consists of the sale of goods/ merchandise for personal or household consumption F either from a fixed location (e.g. Store, kiosk, etc.) or away from a fixed location and related subordinated services."

It is clear from the definition that the quantity of G sale is not the detriment for wholesale trade, but it is the type of customer who determines whether the trade is wholesale or retail. Further, it is apparent that industrial, commercial, institutional and professional business users H are also considered as wholesale customers, even if they are consumers. This, in fact, was the basis of the clarification issued to Metro Cash & Carry that business-to-business sale was permissible under the extant policy.

I 7. Since as per the extant policy FDI in retail trade is prohibited, the company would need to constantly monitor and regulate its business and membership in such a way that those who do not fulfill wholesale criteria are weeded

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A out, and sales are effected only to such customers as fit the definition."

19. Learned senior counsel for the petitioners is aggrieved by the aforesaid finding and specifically referred to the definition as given by B the WTO since that is not a definition under the policy. In fact, it is this definition which has also resulted in a stand being taken in the counter affidavit of UOI in para 7 that in common understanding, sales in large quantity even to consumers could also be understood as wholesale. It C was submitted that the stand has been taken without any consultation or finding by FIPB since the guidelines were meant to assist FIPB to consider the proposals, but the same would not restrict or bind FIPB from considering the proposal in the totality.

D 20. The aforesaid concept of cash and carry wholesale trade, especially with reference to B2B sales has also been explained in the counter affidavits of respondents No. 4 and 5. It has been explained that the approval granted by the GOI is adopting and absorbing the worldwide concept of cash and carry in India, which is a modern concept of the E traditional wholesale trade, which in turn is clearly opposed to retail. B2B sales are permissible and it is irrelevant whether the goods are sold to business customer, who conducts retail or to a business customer conducting operations other than retail such as restaurant or a hotel. F Respondent No. 4 is stated to have set up, in fact, a warehouse facility where businesses purchase for their commercial purposes and the goods are stored in an industrial storage racks. The entry is restricted on the basis of the prior registration with the said respondent, which in turn is dependent on sales-tax registration or valid trade licence. Sale is not to G consumers, but to businesses. This aspect is further explained by what is known as business to consumer (B2C) as opposed to B2B trade. Trade to consumer is affected in case of a domestic trading and such consumer would naturally be a person, who is acting for purposes other than those H of his trade, business or profession. Thus, as distinguished from retail B2C sale, a wholesale trade is sale to a person for purposes of his trade, business or profession. In the guidelines for FIPB in sub-para (k) of para 8, it has been emphasized whether the items involve only trading activity and whether it involves export or both export and import or also includes domestic I trading and if domestic trading whether it also includes retail trading.

21. The emphasis of learned senior counsel for the respondents, thus, was that the concept alien to the policy and as understood in the country was sought to be incorporated.

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A 22. It may be noticed that in so far as the invoices filed by the petitioners are concerned, which show purchase of smaller quantities of items and that too not directly connected with the business, the explanation given is that on the same day, the customer has purchased large quantities of the relevant product and the purchases referred to B were only incidental on that date. An illustration of this is the purchases made by M/s. Shamrock, one of the registered customers, who had purchased 364 jeans under 20 invoices. However, on the same date, some smaller quantities of daily articles were also purchased. It has C been further stated in the counter affidavits of respondents No. 4 and 5 that further checks and balances have been introduced to prevent any stray invoices.

23. Learned senior counsel for the petitioners also emphasised D the fact that this policy of prohibition of retail trading has been consistent policy of the GOI, which has been incorporated in the Foreign Exchange Management (Transfer or Issue of Security By a Person Resident Outside India) Regulations, 2000, which was amended on 18.06.2003 where retail E trading has been specifically mentioned in the list of activities for which FDI is prohibited.

24. In so far as respondent No. 6 is concerned, M/s. Shoprite Checkers India Pvt. Ltd., it is an Indian company, while M/s. Shoprite F Holdings Ltd. is the foreign company. Incidentally, the name of respondent No. 6 was not correctly stated. Respondent No. 7 has stated that it owns a wholly-owned subsidiary in India called Megasave Trading Pvt. Ltd. and respondent No. 6 is stated to be non-existent. This mistake is admitted by the petitioners and in view thereof, leave is granted to file G amended memo of parties incorporating the correct name. M/s. Shoprite Holdings Ltd., respondent No. 7 has also been given permission for wholesale cash and carry trade and no domestic retail trading in any form is permitted. Respondent No. 7 is stated to have finalised a franchise H agreement with Nirmal Super Markets in return for payment of royalty. It is stated that there is no investment in the form of equity by respondent No. 7 and the persons manning the same are completely unrelated to the Shoprite Group. It is Nirmal Super Markets, which carries on retail activities and such franchise arrangement is stated not to require any I regulatory approval if the royalty is payable under the same do not exceed certain limits. Since royalties are within the limit, no permission is stated to be required. The petitioners allege that, however, no such agreements have been produced and, thus, the policy relied upon by the said

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A respondents should not be permitted to be relied upon. It may be noticed that the policy in question deals with automatic approvals and where payment of royalty up to 2% for exports and 1% for domestic sale is allowed under automatic approval and use of trademarks and brand-B names of the foreign collaborator without technology transfer, there is such automatic approval. There are, of course, certain other conditions on the total quantum of the royalty.

25. In terms of the Foreign Exchange Management (Current C Account Transactions) Rules, 2000 notified in terms of the notification dated 03.05.2000 in exercise of powers conferred by Section 5 and sub-section (1) and clause (a) of sub-section (2) of Section 46 of the Foreign Management Act, 1999, Schedule II has been provided with reference to rule 4, which puts the limit on a person to draw foreign exchange D without prior approval of the GOI. Column 8 of the Schedule II deals with remittances under technical collaboration agreements whose payment of royalty exceeds 5% of local sales and 8% of export and lump sum payment exceeds US $ 2 million. The foreign technical E agreement is stated not to have been produced.

26. Respondent No. 8 is M/s. Marks & Spencers and respondent No. 9 is M/s. Planet Sports Pvt. Ltd. The allegation is about a franchise agreement, but the stand taken by the said respondents is that there is no F FDI and the Government's stand is also that on verification, there is no flow of foreign exchange involved and, thus, there is no requirement of the permissions.

27. Learned counsel for all the respondents have opposed the G petition and learned senior counsel for respondent No. 4 emphasised that the concept of cash and carry business is a species of wholesale trading, which requires building a chain of large distribution infrastructure and provides a platform to facilitate manufacturers to increase the efficiency of the length of supply chain by dealing with the dispersed H community of resellers, processors and other business customers like bakeries, caterers, restaurants, industrial and commercial users. This method of trading is stated to be advantageous even to the medium-sized businesses like retailers, traders, etc. who purchase their business I requirements from the Metro wholesale distribution centre on a daily basis. Thus, under one roof at a convenient time and in convenient quantities wholesale levels are available on cash and carry basis, which in turn reduces the requirement of inventories and, thus, lower costs are incurred. The benefits of such business are stated to have been recognised

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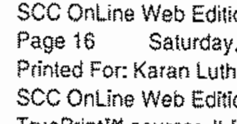

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A internationally and one such decision referred to was of the EC Commission dated 20.11.1996 in Kesko/Tuko (Case No. IV/M-784) where in para 26 of the said judgment, it was observed as under:

> "26. Both Kesko and Tuko achieve significant turnovers from their sales in cash-and-carry outlets. As the term implies, cash and carry, as a means of wholesaling, is different from 'classic wholesaling'. In that customers provide the transport themselves and pay for the goods in cash rather than on credit. Cash and carry is therefore advantageous for customers who are less able to predict long-term demand, who do not have the physical facilities to hold large stocks for a period of time, who do not have the financial resources to guarantee the credit required for large bulk purchases and who therefore prefer to buy smaller quantities on a more frequent basis. Such customers are generally smaller companies, whereas larger customers tend to use wholesaling, as Kesko itself has confirmed in its reply to the Commission's Statement of Objections."

28. Another judgment referred to by learned senior counsel for respondent No. 4 was of U.S. Supreme Court in Roland Elec. Co. v. Walling, 326 U.S. 657 (1946) to emphasise that the distinction between retail and wholesale is not merely between size and volume of sales, but between the types of purchasers. In wholesaling, the purchaser is actuated solely by a profit or business motive in making the purchase; while in retailing, the purchaser is actuated solely by a desire to satisfy his own personal wants or those of his own family and friends through personal use of the commodity or service purchased.

29. The judgment of the Supreme Court of New South Wales in Wollworths Ltd. v. Campbells Cash & Carry P/L & Ors., (1996) 92 LGER 244 was also referred to which also emphasise that the word 'wholesale' or its derivative is not to be wholly determined either by reference to the quantity of goods sold or to the identity of the buyer. The essence of wholesale business was held to be the nature and purpose of activity. It would be relevant to extract the following portion:

> "These cases show that, while usually a wholesaler sells in large quantities,
>
> * the meaning of the word 'wholesale' or of its derivatives is not to be wholly determined either by

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A reference to the quantity of goods sold or to the identity of the buyer;

* a wholesaler, as part of its business, buys and sells merchandise to retailers and other merchants and to B industrial, institutional and commercial users;
* a wholesaler does not sell in significant amounts to ultimate customers;
* C an ordinary incident of conducting a wholesale warehouse is the sale and delivery on the premises to retailers of any goods held there and in any quantity; and
* D sales to consumers are not ordinarily made in a wholesale warehouse nor is it a place to which members of the public - that is consumers - ordinarily come or are invited to resort.

E By contrast retail sales usually are of goods in comparatively small quantities to ultimate consumers who are ordinary members of the public, although this may not always be so. In Collector of Customs v. Chemark (1993) 42 FCR 585 at 591, the Full Federal Court said:

F "The weight of authority seems to us to support a conclusion that the words 'retail sale' have generally acquired a specialised meaning of a sale to an ultimate consumer. We do not think that the usage G of the term limits such consumers to ordinary members of the public. The fact that in the present case almost all of the goods imported by the respondent were directly sold to professional H horticulturalists and not ordinary gardeners as ultimate consumers. Thus in our opinion the learned primary judge erred in his interpretation of the meaning of 'retail sale' within the meaning of heading 3808."

I **30.** Learned senior counsel for respondent No. 4 submitted that cash and carry wholesale business and retail trading are equitably and fundamentally different and the WTO definition adopted by the GOI correctly explains the concept. A reference was also made to the

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A definition of 'cash and carry wholesale', defined in 1993 by the Statistical Office of the European Communities (Eurostat), which is as under:

> "Cash & Carry is a form of trade in which goods are sold from a wholesale warehouse operated either on a self-
> B service basis, or on the basis of samples (with the customer selecting from specimen articles using a manual or computerized ordering system but not serving himself) or a combination of the two. Customers (retailers, professional users, caterers, institutional buyers, etc.) settle the invoice
> C on the spot and in cash, and carry the goods away themselves."

It was, thus, submitted that the only decisive characteristic of
D wholesale is whether the offer is made to business or professionals or to private consumer.

31. Learned senior counsel for respondent No. 4 also referred to Beckman and Engle on Wholesaling Principles and Practice (1937) p.25, which states as under:

E

> "Wholesaling includes all marketing transactions in which the purchaser is actuated solely by a profit or business motive in making the purchase."

F

> "Retailing includes all marketing transactions in which the purchaser is actuated solely by a desire to satisfy his own personal wants or those of his family or friends through the personal use of the commodity or service purchased."

G **32.** The definition given in the Encyclopedia of Social Sciences, Vol. 3 at page 246 is stated to be as under:

> "The distinguishing feature of the retail trade ... consists in selling merchandise to 'ultimate consumers' whereas
> H wholesaling is said to cover sales 'to a retailer, a wholesaler, or an industrial consumer so long as the purpose of the customer in buying such goods is to resell them in one form or another or to use them for business needs as supplies or equipment."

I

33. Learned senior counsel for respondent No. 4 further emphasised that the clarification is really the understanding of the GOI of its own policy and it is not for the petitioners to contend as to what the Government should understand by its own policy. These matters,

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A especially being in the domain of economic policy, the same are not subject to challenge. This concept has been recognised by the Supreme Court in BALCO Employees' Union (Regd.) v. Union of India & Ors., (2002) 2 SCC 333, where it was observed as under:

B "36. ... ...

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though C the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and D it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive E decision relating to economic matters grant a certain measure of freedom or 'play in the joints' to the executive. ......

....

F 47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack G adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to H interfere. In matters relating to economic issues, the Government has, while taking a decision, right to " trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in I any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an

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A employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article B 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it C cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can D claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration E including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

F ... ...

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in G economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing H about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory I provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here

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A the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001."

34. A reference was also made to the subsequent judgment in Federation of Railway Officers Association & Ors. v. Union of India, (2003) 4 SCC 289 wherein it was observed as under: B

"18. Even if we assume that there is force in the material placed by the petitioners that by forming new railway zones efficiency in the Railway Administration would not enhance, the reasons given by the Government and material placed by them in support of forming new railway zones is no less or even more forceful. Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same. Even on the test suggested by Dr. Pal, we cannot travel outside this principle to sit in appeal on the decision of the Government." C D E F

35. Learned senior counsel for respondent No. 4 also emphasised that B2B sales form part of the wholesale trading and cannot be termed as retail trade. They are permitted according to the GOI's own understanding of the matter in issue, which must be given great weight and it should be accepted. It was submitted that though the matter in the present case is of an executive policy, the principles would be same as applicable while construing a statue. In this regard, learned senior counsel referred to judgment of the Supreme Court in Collector of Central Excise v. Andhar Sugar Ltd., 1989 Supp. (1) SCC 144 where it was emphsised that in matters of interpreting or construing a statute, the courts would give much weight to the interpretation put upon it at the time of its enactment and by those whose duty has been to construe, execute and apply the same enactment. On the same principles, another judgment of the Supreme Court in State of Tamil Nadu v. Mabi Traders, 1989 (1) SCC 724 was referred to to the effect that understanding by the Department fully conversant with this branch of trade and in the context G H I

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A of the provisions of the statute must be given weightage and such interpretation should be shown to be clearly wrong before it is overturned. The cash and carry wholesale trading being a term of art is stated to have acquired specialised meaning in international trade and commerce and that is what the GOI seeks to emphasise in the subsequent B clarification.

36. The very concept of the Metro Distribution Cetnres is stated to be distinguishable from a super market. These distribution centres are located in the outskirts of Banglore city and entry to the same is C restricted to cardholders of the registered businesses. No member of the public can enter the Metro Distribution Centres nor any children is allowed. The cardholders are also supposed to be two per each of the businesses. There are also quantitative and monetary restrictions imposed D regarding the items.

37. The procedure followed before issuance of the identity cards to the businesses is stated to be stringent. The consultant of Metro visits the business premises of the proposed customer and verifies the trade E licences/sales-tax registration, the customer registration form is signed and one of the pre-conditions is as under:

> "Metro sells goods to the customer on the condition that they are for resale, commercial, business or industrial use F only. The customer agrees not to purchase goods at the Metro distribution center for personal consumption. Purchases are not allowed by persons as private individuals for personal use."

G **38.** After registration, the customer is issued a magnetic plastic photo identity card, which are, thus, persons specific and the person must come personally to present the card at the main entry. The entry is permitted only after the customer card has been swiped at the entrance H control to ensure that it is still valid apart from the visual check. The card is again swiped at the cash counter before an invoice can be generated by the computer system and the invoice is raised only in the name of the business entity.

I **39.** As a customer selection process, on random basis, checks are done whereby the customer is asked to state particulars of the nature of business and the requirement of his visit to the premises of the said respondent and the bona fide of business organisations and their transactions are constantly monitored.

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A **40.** It is specifically submitted that a business house could well require certain articles for its business purposes, which are not directly in the line of its business and illustration of this is stated to be business establishment selling jewellery requiring a refrigerator, an air conditioner, B food products, cold drinks, coffee, etc. for its own clients/customers or cloth for their employees for uniform.

41. In so far as the issue of retail liquor and drug licence are concerned, the same are stated to have been obtained by the private C respondents for the reason that the wholesale drug licence as well as wholesale liquor licence permits the licence-holder to make sales only to other licence-holders as such the wholesale licence would not have permitted the respondent to make sales to some of its business customers for their commercial use. Thus, drugs may be required by a hotel for its D resident guest or by any factory or business establishment that maintains a first aid kit. The crux is that the same is sold for business purposes. The same is stated to be the position for wines and liquors and it is emphasised that for the period from January to September, 2004, sale E under retail drug licence and retail liquor licence are 0.20% and 2.64% respectively of the total sales. Thus, B2B sales are stated to be totally in the nature of wholesale trade apart from the sales in large quantities to individual customers for personal or household consumption or to retailers for further sale. The report of the Karnataka Government is F stated to be based on the misconception of the very concept of what is wholesale trade, especially with reference to B2B sales. In this behalf, the report of GOI is emphasised apart from the fact that another report of the Department of Industries and Commerce of the Government of G Karnataka had concluded that the said respondent was working in conformity with th clarifications.

42. Learned senior counsel for respondent No. 5 has, apart from emphasising the submissions advanced by learned senior counsel for H respondent No.4, laid stress on the fact that the investment was made by the said respondent after obtaining the clarification and the said respondent did not proceed further until the clarification was issued. In so far as the role of FIPB is concerned, it was submitted that the same is I an internal Government departmental matter and the role is recommendatory to the Government. It was submitted that, in fact, if the Government had changed its policy after giving the clarification to the said respondent, the plea of promissory estoppel would have been available since the change of policy could only have been prospective.

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A It was, thus, submitted that what the Government could not have done, the petitioner can hardly persuade the Court to do by judicial pronouncement making out a case of is own grievance on the issue of interpretation of the policy. The judgment of the Supreme Court in State of Punjab v. Nestle India Ltd. & Anr., (2004) 269 ITR 97 where B the observations of Chandrasekhara Aiyar, J. in Collector of Bombay v. Municipal Corporation of the City of Bombay, (1952) 3 SCR 43 were referred to, which are as under:

> C "... The invalidity of the grant does not lead to the obliteration of the representation. ... Can the Government be now allowed to go back on the representation, and if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as D legal fraud which a court of equity must prevent being committed. If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 E of the Indian Evidence Act. But even otherwise, that is if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfill it. ... Courts must do justice by the F promotion of honesty and good faith, as far as it lies in their power."

43. Learned senior counsel for respondent No. 5 further referred to judgment of the Supreme Court in Rai Sahib Ram Jawaya Kapur & G Ors. v. The State of Punjab, A.I.R. 1955 S.C. 549 where in para 12 while dealing with the issue of the role of different Government branches, it was observed as under:

> "12. ... ...
>
> H The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and I consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of

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A departmental or subordinate legislation when such powers are delegated to it by the legislature."

44. In so far as respondents No. 8 and 9 are concerned, they washed their hands of the matter on the basis that there is no flow of foreign B exchange. The question of RBI approval is stated not to be arisen as there are no remittances for use of the franchisee in India and this has been even enquired into by the GOI. There was no payment of royalty and the website had only referred to the trademark use on franchise C arrangement.

45. The defence of respondents No. 6 and 7 is on slightly different footing as there is a flow of royalty for the brand-name. The franchise agreement is for the know-how to be given, but there is no financial D contribution. The super market retail premises are opened and operated by Nirmal Lifestyle and there is wholesale / cash and carry business in respect of the relevant facility. The provision for automatic approval earlier referred to was emphasised as also the fact that the respondents have categorically stated that the royalty is within the limits provided E for such automatic approval.

46. It is also emphasised that the regime itself stand amended on 24.02.2004 in terms whereof there is no need for registration and remittances under the franchise agreement can be made where the F trademark is not sold. The rules framed in the year 2000 require prior approval of Reserve Bank of India under rule 5 and Schedule III specifies such remittances where prior approval is required. Item No. 16 deals with remittances for use and/or purchase of trademark/franchise in India, G which is not so in the present case and, thus, regulation 4 requiring no prior approval would apply since it is only a case of payment of royalty under para 2 of Schedule II.

47. Learned ASG supported the stand of respondents No. 4 and 5 H by emphasising that the executive power is with the UOI under Article 53 of the Constitution of India and Article 77(3) provides for making rules for the more convenient transaction of the business of the GOI and for allocation of the said business. The last allocation of business of 15.10.1999 was referred to to submit that FIPB is actually a part of the I concerned Ministry of Commerce and Industry. Thus, the whole matter fall within the domain of a policy decision.

48. The clarification was stated to have been issued by the concerned Ministry on the basis of what it understood by the

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A wholesale cash and carry trade. There was no interpretation of law involved, but of the policy by the parent Department, which created the policy. It was emphasised that nothing precluded the Government from considering and relying on WTO definition, especially taking into consideration the era of a liberal regime and the expansion of B international trade and commerce. It was, thus, emphasised that what was done was consistent with the norms and understanding of the phrasology internationally. Learned counsel referred to judgment of the Supreme Court in BALCO Employees' Union (Regd.)'s case C (supra) and Federation of Railway Officers Association's case (supra), which have been quoted above to emphasise that in such matters falling within the economic domain of the Government's decision-making policy, it should be the Government which decides D what policy to make and what is meant by that policy.

49. Learned ASG referred to a number of dictionaries for the meaning and effect of wholesaling.

50. The definition of 'wholesaling' in The New Encyclopaedia E Britannica, Vol. 23 at page 549 was referred to, which is as under:

> "Wholesaling. Wholesaling consists of selling to other business firms either for resale or for business use, usually in bulk and at less than retail prices. A wholesaler is an F independent merchant operating one or more wholesale establishments. Manufacturers may engage in wholesaling through their sale branches and retailers may also do so internally through chain-store warehouses, although they G are not classed as wholesalers."

51. In The New Encyclopaedia Britannica, Vol. 12, 'wholesaling' has been defined at page 644 as under:

> "Wholesaling, the selling of merchandise by anyone other H than a retail customer, merchandise may be sold to a retailer, wholesaler, or to an enterprise that will use it for business, rather than individual, purpose. Wholesaling usually, but not necessarily involves sales in quantity and almost always I at a cost that is significantly lower than the brokerage retail price."

52. In Words and Phrases, Permanent Edition, Vol. 45, 'wholesaling' has been defined as under:

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A "'wholesaling' covers sales to a retailer or an industrial consumer so long as purpose of customer in buying goods is to resell them or to use them for business needs as supplies or equipment. Roland Elec. Co. v. Walling, Md., B 66 S.Ct. 413, 421, 326 U.S. 657, 90 L.Ed. 383."

53. In rejoinder, learned senior counsel for the petitioners read out from a compilation filed of the submissions. In my considered view, however, it is not necessary to go into depth on this issue since a rejoinder C must be restricted to rebuttal of any argument advanced in response by the respondents and cannot amount to a fresh submissions to be again made. In fact, both the sides have made elaborate oral arguments running into almost eight hours between themselves. The controversy, however, in my considered view, falls in a very narrow compass.

D

54. The aforesaid is apparent from the fact that no one is disputing the right of the Government to lay down its policy. There is no dispute that FDI is not permitted in retail trade. FDI in cash and carry wholesale trade is permitted and the petitioners do not have a real dispute with the E clarification / amendment to the extent that the requirement of sales-tax registration was not replaced, but supplemented with a valid trade licence. The petitioners are aggrieved by the concept of B2B sales, which has been permitted as part of cash and carry wholesale trade.

F **55.** Learned senior counsel for the petitioners had submitted that the Government has a right to amend the policy, but so long as the policy exists, it has to be followed and the same cannot be changed through the circuitous method of clarification (which is actually an amendment).

G **56.** The aforesaid plea, in my considered view, is spacious in its very nature because once it is recognised that the Government can amend its policy, nothing precludes the Government from issuing a clarification even if it is read in the nature of an amendment of the policy. The policy H was formulated and the question arose as to how the Government would understand the policy. Representations were made by the FDI investors for the said purpose and after examining the matter, clarification was issued. The original records in this behalf have been produced and a perusal of the same shows that the matter has been discussed at length at I various levels. It is not, thus, a hurried response without application of mind or where the discussion and consultation has not taken place at the highest level. It is not important that the letter dated 05/10.12.2002 has been issued by the Under Secretary to the GOI. The Under Secretary to the GOI has only issued the letter on behalf of the Ministry of Commerce

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A and Industry, which is the parent Ministry. I fail to appreciate how the Government can be precluded from clarifying or amending its policy which by its very nature is executive in character.

57. The matter in issue is not even of any statutory interpretation, B but of the policy. The policy-framer is the concerned Ministry which itself has issued the clarification / modification. The learned ASG is right in his submissions that the matter is one of policy decision and allocation of businesses and FIPB functions as part of the concerned C Ministry. It is the said concerned Ministry which has issued the clarification and, thus, the aspect is one of the internal functioning of the Government. The final decision has been communicated after due deliberations.

D 58. The complete emphasis of learned senior counsel for the petitioners was that the GOI was wrongly interpreting the terminology of 'cash and carry wholesale trade'. The question which, thus, arises is how is this term to be interpreted and by whom? The relevant authority is the Government itself which had framed the policy. It is for the E Government to interpret the terminology in question. It has so interpreted the terminology, which facilitates what the private respondents are doing. The petitioners can hardly have a complaint about the same.

59. The interpretation of the Government is also not out of thin F hair. It is trite to say that with the expansion of international commerce and trade, there are certain internationally understood concepts, which have come into play. Is the Court to look to the traditional definition of what may be wholesale or retail as may be considered in the dictionaries G and in the country earlier or is the Court to accept the definition adopted by the Government on international practice? The Government's view is based on the WTO definition of wholesale trade. The Government can hardly be faulted on this account and it is not for the Court to go into this question.

H 60. It has to be appreciated that B2B sales is a concept which internationally today carries a different meaning as is apparent from the various judgments and definitions given. This has also an impact on what is meant by wholesale trade and retail trade in the international I parlance. Thus, B2B trade forming a part of wholesale trading was a later development to the traditional concept of what is understood by retail and wholesale trade. The traditional concept of wholesale trade was, thus, expanded and the emphasis on the quantity of sale went down. What has been emphasised is the purpose for which the transaction takes

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A place. The concept of B2B trade is that the goods are purchased by the business for further resale or for use in house or for its customers. Thus, the contention of the respondents is correct that a specialised meaning has been acquired to this concept. The concept of setting such wholesale outlets is also different.

B

61. The nature of such wholesale trade through these centres has been explained extensively to submit that they are not in the nature of retail trading outlets located within the city where the customers can walk in with the family to purchase any item. Thus, checks and balances are provided to qualify for B2B sales. It is only a recognised and registration business house, which meets with the parameters, which would be capable of purchasing goods from such wholesale centres. The centres are not based in the town and have been created with the object of having one place buy for the retailers to cover the whole substratum of purchases. Thus, if a customer of a retailer requires a particular good, the retailer can go to such centres for purchasing it rather than keeping a large inventory of all the goods. It is, thus, more a world concept of wholesale business. The agreements are entered into with the businesses after verifying that they have a sales-tax registration or a valid trade licence. Anyone cannot walk into the wholesale centres, but it is the people with photo identity cards of the businesses, which are normally two in number, who would be entitled to go and purchase the relevant goods. In this process of purchase, it is open for the businesses not only to purchase goods which have to be further sold, but also utilise for requirements and promotion of its business. The agreement itself clearly stipulates that the purchase made is for resale, commercial business or industrial use only. Checks and balances have been provided for this purpose. Thus, business sales are included in this irrespective of the quantity of sales. The EC Commission had also the occasion to consider this concept in Kesko / Tuko's case (supra), which emphasises the importance of such wholesale trade on cash and carry basis. This is distinguishable from retail trade for personal or household consumption. The Eurostat also defined the concept of 'cash and carry wholesale trade' and the important factor is the characteristics of the wholesale trade as to whether it is an offer made to business / professional or to private consumers. The nature of transaction cannot be for family need requirements.

C D E F G H I

62. The examples given of the requirements are cogent. Thus, a factory or establishment require a first-aid kit, medicines may be purchased. Can this be said to be retail business? The answer would be

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A in the negative taking into consideration the modern and internationally understood definition of wholesale trade including B2B sales, which has been adopted by the GOI. Interestingly, these natures of sales are very small percentage of the total sales.

B **63.** The importance of a larger play to the Government in making its own policy, especially in matters falling in economic domain have been emphasised repeatedly including in BALCO Employees' Union (Regd.)'s case (supra) and Federation of Railway Officers Association's case (supra). Thus, even while dealing with the issue of privatisation, it C was held that it is for the Government to frame its own policy in the matter. The role of the Court would be limited in such a case.

64. A number of definitions have been given by both the sides, which have been referred to above. The reason why the same are not D dealt with in detail is the fact that what is material is not how the petitioner or private respondents understand this concept and support the same from various definitions incorporated in different dictionaries, but as to how the GOI understands this concept. It is not also merely GOI's E understanding of the concept, but this understanding is based on certain internationally accepted norms and definitions. The petitioners cannot be permitted to seek to contend that the Government must adopt the traditional definition of wholesale trade and retail trade and is precluded F from adopting the international definition whether it be of WTO or otherwise. This being the position, it is the stand of the Government, which has to be given the greatest weight in such matters. There cannot be any knit-picking on this issue of the definition when the stand of the Government has come clearly in its affidavit as enunciated by its G clarification. The Government wants B2B sales to form a part of wholesale cash and carry business. So be it.

65. In so far as the issue of franchise agreements are concerned, respondents No. 6 and 7 have already explained that there is automatic H clearance system where the royalty is below a certain level and even that has been subsequently amended in 2004. The said respondents have stated that the real business has started, in fact, after that.

66. Respondents No. 8 and 9 have since categorically stated that I there is no fund flow and this has been verified by the GOI. The petitioners can, thus, have no grievance in respect of the same.

67. There seems to be some force in the contention of the respondents that it is not the small retailer, which is really worried or

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A bothered by this Government policy, but possibly the competing wholesale traders, who may find a more competitive situation as the goods may be available at a more competitive price to the retailers. There is really no larger public good also involved in such a case, which has B been pleaded by the petitioners.

68. I find absolutely no merit in the writ petition and the same is dismissed with costs quantified at Rs.10,000/- for respondents No. 1 to 3 and Rs.5,000/- each for respondents No. 4 to 9, totalling to C Rs.40,000/-.

D

ILR (2004) II DELHI 560

CIVIL MISCELLANEOUS

E

VOGEL MEDIA INTERNATIONAL GMBH AND ANR. .....PLAINTIFFS

F

VERSUS

JASU SHAH AND ORS. .....DEFENDANTS

(R.C. JAIN J)

G **CIVIL SUIT : 518/2002 & IA : 3762/2004, 5668/2004 & 6730/2004** **DATE OF DECISION: 22.11.2004**

H **Code of Civil Procedure, 1908 – Order VII Rule 10 and 10A – Plaintiffs filed a suit for permanent inunction alongwith an application u/o XXXIX rule 1 and 2 – Experte injunction granted – Suit transferred to District Court in view of Section 2 of the Delhi High Court (Amendment) Act, 2003 I – Assigned to Additional District Judge – Application u/o VI rule 17 filed for enhancement of valuation to more than Rs. 20 lacs – Allowed – Plaint returned for presentation before competent court – Original plaint presented before the High Court without making amendments – Applications**

ANNEXURE-P-4

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

PRESS NOTE NO. 4 (2006 Series)

Subject: Rationalisation of the FDI Policy

The policy on Foreign Direct Investment (FDI) has been reviewed on a continuing basis and several measures announced from time to time for rationalization / liberalization of the policy and simplification of procedures.

2. Government of India has recently further reviewed the policy on FDI and decided as under:

a. To allow under the automatic route, FDI up to 100%, for :
   i. distillation & brewing of potable alcohol;
   ii. manufacture of industrial explosives;
   iii. manufacture of hazardous chemicals;
   iv. manufacturing activities located within 25 kms of the Standard Urban Area limits which require Industrial license under the Industries(Development & Regulation)Act, 1951;
   v. setting up Greenfield airport projects;
   vi. laying of Natural Gas/LNG pipelines, market study & formulation and Investment financing in the Petroleum & Natural Gas sector; and
   vii. cash & carry wholesale trading and export trading.

b. To increase FDI caps to 100% and permit it under the automatic route for:
   i. coal & lignite mining for captive consumption;
   ii. setting up infrastructure relating to marketing in Petroleum & Natural Gas sector; and
   iii. exploration and mining of diamonds & precious stones.

c. To allow FDI up to 100% under the automatic route in
   i. power trading subject to compliance with Regulations under the Electricity Act, 2003;
   ii. processing and warehousing of coffee and rubber.

d. To allow FDI up to 51 % with prior Government approval for retail trade of 'Single Brand' products, detailed guidelines for which have been notified vide Press Note 3 (2006 Series).

e. To allow under the automatic route transfer of shares from residents to non-residents in financial services, and where Securities & Exchange Board of India (Substantial Acquisition and Takeover) Regulations are attracted, in cases where approvals are required from the Reserve Bank of India/ Securities & Exchange Board of India (Substantial Acquisition and Takeover) Regulations /Insurance Regulatory & Development Authority. With this, transfer of shares from residents to non-residents, including acquisition of shares in an existing company would be on the automatic route subject to sectoral policy on FDI.

f. To dispense with the requirement of mandatory divestment of 26% foreign equity in B2B e-Commerce.

3. FDI/NRI investment under the automatic route shall continue to be governed by the Sectoral regulations/licensing requirements.

4. A summary of the FDI policy and regulations applicable in various sectors / activities is at the Annex.

(Umesh Kumar)
Joint Secretary to the Government of India

F. No. 5(3)/2005-FC dated 10 -2-2006

ANNEX TO PRESS NOTE 4 (2006 Series)

Policy on Foreign Direct Investment (FDI)

I. **Sectors prohibited for FDI**
   i. Retail trading (except Single Brand Product retailing)
   ii. Atomic energy
   iii. Lottery business
   iv. Gambling and Betting .

II. **All Activities/ Sectors would require prior Government approval for FDI in the following circumstances:**
   i. where provisions of Press Note 1(2005 Series) are attracted;
   ii. where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the Small Scale sector.

III. **In Sectors/Activities not listed below, FDI is permitted up to 100% on the automatic route subject to sectoral rules / regulations applicable.**

IV. **Sector-specific policy for FDI**

S.N	Sector/Activity	FDI Cap / Equity	Entry Route	Other conditions	Relevant Press Note issued by D/o IPP www.dipp.gov.in
1.	**Airports-**				
a.	Greenfield projects	**100%**	Automatic	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in	PN 4 / 2006
b.	Existing projects	**100%**	FIPB beyond 74%.	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. in	PN 4 / 2006
2.	**Air Transport Services**	**49%- FDI; 100%- for NRI investment**	Automatic	Subject to no direct or indirect participation by foreign airlines. Government of India Gazette Notification dated 2.11.2004 issued by Ministry of Civil Aviation www.civilaviation.nic. in	.
3.	**Alcohol - Distillation & Brewing**	**100%**	Automatic	Subject to license by appropriate authority	PN 4 / 2006

4.	**Asset Reconstruction Companies**	**49% (only FDI)**	FIPB	Where any individual investment exceeds 10% of the equity, provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. www.finmin.nic.in	
5.	**Atomic Minerals**	**74%**	FIPB	Subject to guidelines issued by Department of Atomic Energy vide Resolution No. 8/1(1)/97-PSU/1422 dated 6.10.98.	
6.	**Banking - Private sector**	**74% (FDI+FII)**	Automatic	Subject to guidelines for setting up branches/ subsidiaries of foreign banks issued by RBI. www.rbi.org.in	PN 2 / 2004
7.	**Broadcasting**				
a.	FM Radio	FDI +FII investment up to **20%**	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting www.mib.nic.in	PN 6 / 2005
b.	Cable network	**49%** (FDI+FII)	FIPB	Subject to Cable Television Network Rules (1994) Notified by Ministry of Information & Broadcasting www.mib.nic.in	
c.	Direct-To-Home	**49%** (FDI+FII). Within this limit, FDI component not to exceed 20%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	
d.	Setting up hardware facilities	**49%** (FDI+FII)	FIPB	Subject to Up-linking Policy notified by	PN 1 / 2006

	such as up-linking, HUB, etc			Ministry of Information & Broadcasting www.mib.nic.in	
e.	Up-linking a News & Current Affairs TV Channel	**26% FDI+FII**	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1/ 2006
f.	Up-linking a Non-news & Current Affairs TV Channel	**100%**	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting www.mib.nic.in	PN 1 / 2006
8.	**Cigars & Cigarettes-** Manufacture	**100%**	FIPB	Subject to industrial license under the Industries (Development & Regulation) Act, 1951	PN 4 / 2006
9.	**Coal & Lignite mining** for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalisation) Act, 1973.	**100%**	Automatic	Subject to provisions of Coal Mines (Nationalization) Act, 1973 www.coal.nic.in	PN 4 / 2006
10.	**Coffee & Rubber processing & warehousing**	**100%**	Automatic		PN 4 / 2006
11.	**Construction Development projects,** including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships.	**100%**	Automatic	Subject to conditions notified vide Press Note 2 (2005 Series) including: a. minimum capitalization of US$ 10 million for wholly owned subsidiaries and US$ 5 million for joint venture. The funds would have to be brought within six months	PN 2 / 2005 & PN 2 / 2006

				of commencement of business of the Company. b. Minimum area to be developed under each project-10 hectares in case of development of serviced housing plots; and built-up area of 50,000 sq. mts. in case of construction development project; and any of the above in case of a combination project. **[Note: For investment by NRIs, the conditions mentioned in Press Note 2 / 2005 are not applicable.]**	
12.	**Courier services** for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	**100%**	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. www.indiapost.gov.in	PN 4 / 2001
13.	**Defence production**	**26%**	FIPB	Subject to licensing under Industries (Development & Regulation) Act, 1951 and guidelines on FDI in production of arms & ammunition.	PN 4 / 2001 & PN 2 / 2002
14.	**Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, aqua-culture, cultivation of**	**100%**	Automatic		PN 4 / 2006

	vegetables,, mushrooms, under controlled conditions and services related to agro and allied sectors.				
15.	**Hazardous chemicals,** viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and di-isocyantes of hydrocarbon.	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral regulations.	PN 4 / 2006
16.	**Industrial explosives-** Manufacture	100%	Automatic	Subject to industrial license under Industries (Development & Regulation) Act, 1951 and regulations under Explosives Act, 1898	PN 4 / 2006
17.	**Insurance**	26%	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority www.irda.nic.in .	PN 10 / 2000
18.	**Investing companies in infrastructure / services sector (except telecom sector)**	49%	FIPB	Foreign investment in an investing company will not be counted towards sectoral cap in infrastructure /services sector provided the investment is up to 49% and the management of the company is in Indian hands.	PN 2 / 2000 & PN 5 / 2005
19.	**Mining** covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned	PN 2 / 2000, PN 3 / 2005,& PN 4 / 2006

				subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and / or the particular mineral.	
20.	**Non Banking Finance Companies- approved activities**				
i) ii) iii) iv) v) vi) vii) viii) ix) x) xi) xii) xiii) xiv) xv) xvi) xvii) xviii) xix)	Merchant banking Underwriting Portfolio Management Services Investment Advisory Services Financial Consultancy Stock Broking Asset Management Venture Capital Custodial Services Factoring Credit Reference Agencies Credit Rating Agencies Leasing & Finance Housing Finance Forex Broking Credit card business Money changing business Micro credit Rural credit.	100%	Automatic	Subject to: a. minimum capitalization norms for fund based NBFCs - US$ 0.5 million to be brought upfront for FDI up to 51%; US$ 5 million to be brought upfront for FDI above 51% and up to 75%; and US$ 50 million out of which US$ 7.5 million to be brought upfront and the balance in 24 months for FDI beyond 75% and up to 100%. b. minimum capitalization norms for non-fund based NBFC activities- US$ 0.5 million. c. foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in Under Secretary 50 million without any restriction on number of operating	PN 2 / 2000, PN 6 / 2000, & PN 2 / 2001

				subsidiaries without bringing additional capital. d. joint venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow. e. compliance with the guidelines of the RBI.	
21.	**Petroleum & Natural Gas sector**				
a.	Other than Refining and including market study and formulation; investment/ financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.	**100%**	Automatic	Subject to sectoral regulations issued by Ministry of Petroleum & Natural Gas; and in the case of actual trading and marketing of petroleum products, divestment of 26% equity in favour of Indian partner/public within 5 years. www.petroleum.nic.in	PN 1 / 2004 & PN 4 / 2006
b.	Refining	**26% in case of PSUs** **100% in case of Private companies**	FIPB (in case of PSUs) Automatic (in case of private companies)	Subject to Sectoral policy www.petroleum.nic.in	PN 2 / 2000
22.	**Print Media-**				
a.	Publishing of **newspaper and periodicals** dealing with news and	26%	FIPB	Subject to Guidelines notified by Ministry of Information &	

	current affairs			Broadcasting. www.mib.nic.in	
b.	**Publishing of scientific magazines/ specialty journals/ periodicals**	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in	PN 1 / 2004
23	**Power** including generation (except Atomic energy); transmission, distribution and Power Trading.	100%	Automatic	Subject provisions of the Electricity Act, 2003 www.powermin.nic.in	PN 2 / 1998, PN / 7 2000, & PN 4 / 2006
24.	**Tea Sector**, including tea plantation	100%	FIPB	Subject to divestment of 26% equity in favour of Indian partner/Indian public within 5 years and prior approval of State Government for change in land use.	PN 6 / 2002
25.	**Telecommunication**				
a.	Basic and 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 telecom services	**74%** (Including FDI, FII, NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity in Indian promoters/ Investing Company)	Automatic up to 49%. FIPB beyond 49%	Subject to guidelines notified in the PN 5 / 2005 Series	PN 5 / 2005
b.	ISP with gateways, radio-paging, end-to-end bandwidth.	**74%**	Automatic up to 49%. FIPB beyond 49%	Subject to licensing and security requirements notified by the Department of Telecommunications www.dotindia.com	PN 4 / 2001

c.	ISP without gateway, infrastructure provider providing dark fibre, electronic mail and voice mail	100%	Automatic up to 49%. FIPB beyond 49%	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required. www.dotindia.com	PN 9 / 2000
d.	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements. www.dotindia.com	PN 2 / 2000
26.	**Trading**				
a.	Wholesale / cash & carry trading	100%	Automatic	Subject to guidelines for FDI in trading issued by Department of Industrial Policy & Promotion vide Press Note 3 (2006 Series).	PN 4 / 2006
b.	Trading for exports	100%	Automatic		
c.	Trading of items sourced from small scale sector	100%	FIPB		
d.	Test marketing of such items for which a company has approval for manufacture	100%	FIPB		
e.	Single Brand product retailing	51%	FIPB		
27.	**Satellites - Establishment and operation**	74%	FIPB	Subject to Sectoral guidelines issued by Department of Space / ISRO www.isro.org	
28.	Special Economic Zones and Free Trade Warehousing Zones covering setting up of these Zones and setting up units in the Zones	100%	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. www.sezindia.nic.in	PN 9 / 2000; PN 2 /2006; & PN 4 / 2006

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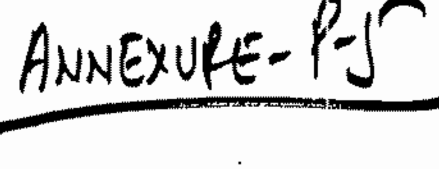

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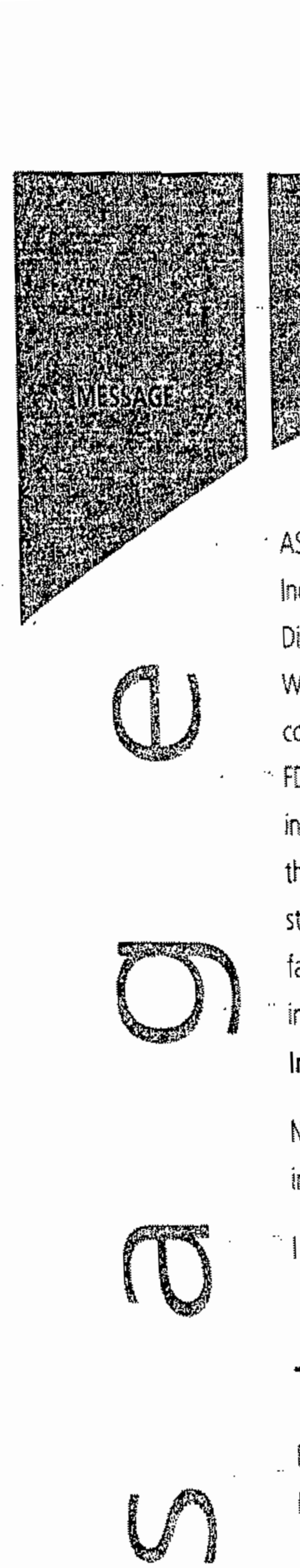
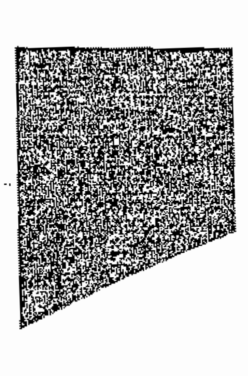
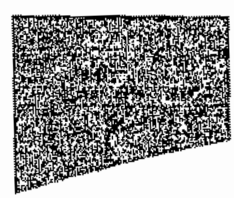
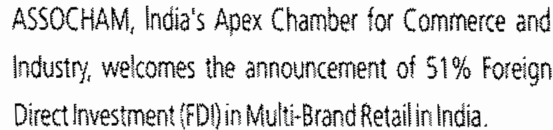
FDI in RETAIL
Advantage Farmers

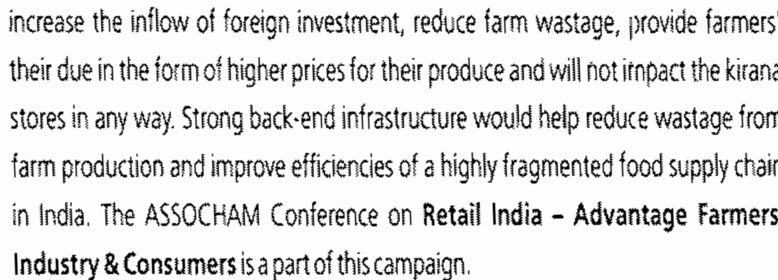








ASSOCHAM, India's Apex Chamber for Commerce and Industry, welcomes the announcement of 51% Foreign Direct Investment (FDI) in Multi-Brand Retail in India.



We at ASSOCHAM have launched a campaign across the country to spread awareness at the grass-roots level, that FDI is a blessing which would lead to massive job generation, increase the inflow of foreign investment, reduce farm wastage, provide farmers' their due in the form of higher prices for their produce and will not impact the kirana stores in any way. Strong back-end infrastructure would help reduce wastage from farm production and improve efficiencies of a highly fragmented food supply chain in India. The ASSOCHAM Conference on **Retail India – Advantage Farmers, Industry & Consumers** is a part of this campaign.

Needless to say that recent policy initiatives of the Government have improved investor sentiments and such initiatives should be supported by all quarters.

I convey my good wishes to ASSOCHAM for the success of this Conference.

Rajkumar Dhoot (M.P.)
President
ASSOCHAM

FDI in Retail - Advantage Farmers

Food & Agribusiness Strategic Advisory and Research (FASAR) Team - YES BANK

October 2012

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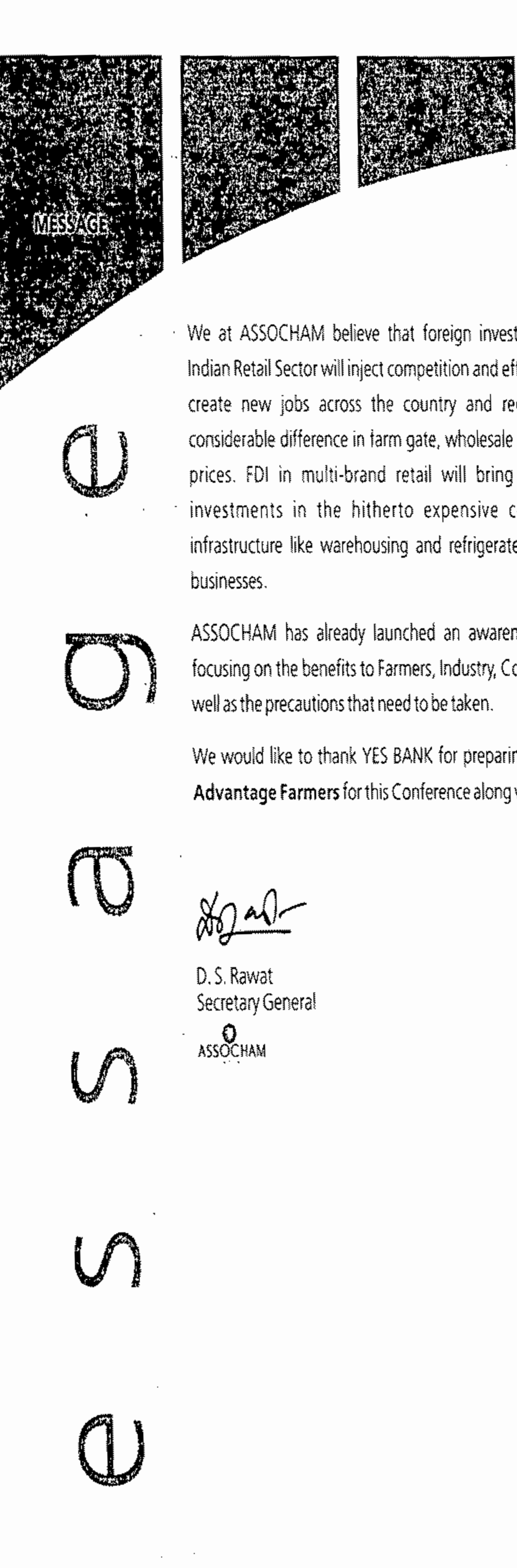
YES BANK Ltd.
Registered and Head Office
9th Floor, Nehru Centre,
Dr. Annie Besant Road,
Worli, Mumbai - 400 018, INDIA
Tel : +91 22 6669 9000
Fax : +91 22 2497 4088

Northern Regional Office
48, Nyaya Marg, Chanakyapuri
New Delhi - 110021
Tel : +91 11 6656 9000
Email : fasar@yesbank.in

Mr. D. S. Rawat
Secretary General
The Associated Chambers of Commerce and Industry of India
ASSOCHAM Corporate Office,
1, Community Centre Zamrudpur,
Kailash Colony, New Delhi – 110 048
Tel : +91 11 4655 0555
Fax : +91 11 4653 6481/82
Email : d.s.rawat@assocham.com
Website : www.assocham.org



We at ASSOCHAM believe that foreign investments in Indian Retail Sector will inject competition and efficiencies, create new jobs across the country and reduce the considerable difference in farm gate, wholesale and retail prices. FDI in multi-brand retail will bring in huge investments in the hitherto expensive cold chain infrastructure like warehousing and refrigerated trucks to service the front-end businesses.

ASSOCHAM has already launched an awareness campaign across the country focusing on the benefits to Farmers, Industry, Consumers and other stakeholders as well as the precautions that need to be taken.

We would like to thank YES BANK for preparing a White Paper on **FDI in Retail: Advantage Farmers** for this Conference along with ASSOCHAM.

D. S. Rawat
Secretary General
ASSOCHAM

FOREWORD

Foreword

The retail sector in India is expanding and modernizing rapidly in line with India's economic growth. With such rapid growth, we are at a point where consumption growth will witness not just increased penetration in existing categories but also the launch of a number of new products and categories in India.

The overall retail market (organized and unorganized) is expected to grow at a compounded rate of 15% over the next 5 years from INR 23 trillion in 2011-12 to INR 47 trillion in 2016-17. Rising incomes will be the primary driver of this growth. Favourable demographics, increasing urbanization and nuclearisation of families are other factors which will drive retail consumption in India.

Organized retail, which constituted a low 7% of total retail in 2011-12, is estimated to grow at a CAGR of 24% and attain a 10.2% share of total retail by 2016-17. In short, both unorganized and organized retail are bound not only to coexist but also achieve rapid and sustained growth in the coming years. This is clearly not a case of a zero sum game as both organized and unorganized retail will see a massive scaling up of their activities. In fact, the retail sector, left entirely in the unorganized and informal segment of the economy, could well emerge as a major bottleneck to raising productivity in both agriculture and industry.

The Government of India recently launched a package of landmark reforms on September 14, 2012 allowing Foreign Direct Investment in multi-brand retail among other sectors. The policy is a strong statement of intent from the Government with respect to multi brand retailing and will assure international retailers about the long term opportunity for retail in India. This opportunity will see investments happening in front-end retail, supply chain and wholesale. Some implementation issues such as permission from State Governments, 30% sourcing from small scale units, cities in which roll-out will be permitted etc. do remain. However, the sector continues to be attractive in terms of growth potential.

This report **FDI in Retail – Advantage Farmers** by YES BANK, outlines the retail scenario in India from the food and agri perspective and seeks to provide a snapshot of the impact of FDI in retail on the food, agriculture and agribusiness stakeholders. The rationale for this report is to present the facts related to FDI and highlight its key takeaways for policy makers, industry leaders and other stakeholders in an effort to catalyze the positivity and elucidate the benefits of this path breaking reform measure.

Regards

Dr. Rana Kapoor
Senior Vice President, ASSOCHAM and
Founder, Managing Director & CEO

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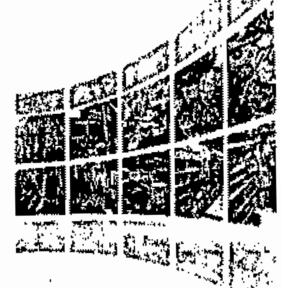


Executive Summary

The outlook for the retail industry in India looks promising on grounds of policy reforms, increasing disposable incomes and flourishing consumerism, a strong expected GDP growth and the advent of latest technologies in the country. The opening up of Foreign Direct Investment (up to 51%) in the multi-brand retail segment is expected to bring in an investment of over INR 400 billion and open up huge opportunities for farmers, the industry and consumers.

In the past few years, domestic enterprises have already entered into the arena of multi brand retailing. The consumers have benefitted from these enterprises, however concerns remain on the benefit to the farmers. This is because neither the Government nor the domestic players have been able to create the necessary back-end infrastructure which could provide a seamless flow of goods from the farm gate to the end consumers.

Through FDI in retail, major foreign players are now expected to change the game and create a win-win situation for the farmers, suppliers, consumers, the country's economy as well as the enterprise itself. FDI in retail is expected to bring in adequate infrastructure creation, efficient management of the supply chain, controlled food inflation, better quality product offerings to the consumers and simultaneously create numerous job opportunities directly as well as indirectly.

Like any other sector, organized retailing has been facing major challenges on account of getting the requisite talent and skills, multi license regime, an inefficient supply chain with numerous intermediaries and lack of basic infrastructure.

To make this FDI work in tandem with government objectives, the Government has already set some preconditions like:

- 50% of the foreign investment to be invested in back end infrastructure
- Minimum sourcing of 30% from the SME's
- E-commerce in any form being disallowed

Such implications will ensure benefits to all the stakeholders.

Introduction

- Despite a slowdown in economic growth and a depreciating rupee, the retailing industry grew strongly in 2011. With the efforts to curb rising inflation resulting in single digit inflation, the value sales of independent grocers and other retailers received a strong impetus which helped ensure that all categories witnessed growth throughout the year.
- Other major factors driving retail growth in India included growing urbanization, a greater variety of new stores coming into the picture, as well as international brands entering the Indian market.
- Indian retail is dominated by a large number of small retailers consisting of local kirana shops popularly known as mom and pop stores, dairy shops, green grocers etc. which together make up the so-called "unorganized retail" or traditional retail.
- The value sales of these traditional stores accounted for more than 90% of the sales in the year 2011. The unorganized sector will expand further due to its proximity, goodwill, credit sales, bargaining, loose items, convenient timings and home delivery.
- The last decade has witnessed the entry of a number of organized retailers opening stores in various modern formats in metros and other important cities. Still, the overall share of organized retailing in total retail business has remained low.
- The traditional grocery retail is the largest contributor to the total grocery retailing in India. But more than that, it is a major employment provider accounting for 10% of the total employment in the country. This became a major concern for the Indian government while deciding over the opening of FDI gates for India.
- Other concerns over the possibility of a monopolistic market, exploitation of farmers and loss of consumer base to traditional retail chains were also raised.

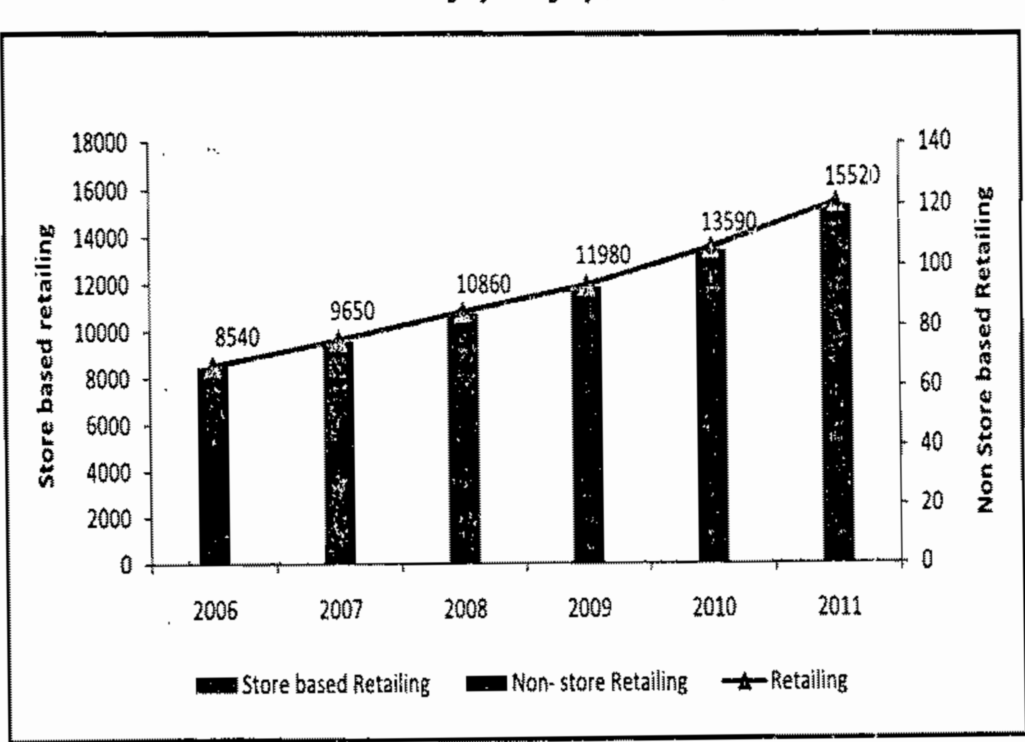
Retailing in India – Current Scenario

- The Indian retail industry accounted for 9.4% employment and 22% of the count'y's GDP in the financial year 2011
- The inflation rate also fell from double digits in 2010 to a single digit figure in 2011 thereby driving growth of grocery retailing
- One of the key drivers in the growth in retailing is the increased consumer demand resulting due to the growth of consumer groups with disposable income between USD 2,500 and USD 10,000 per annum which grew from 47% in 2010 to 50% in 2011
- In grocery retailing, hyper markets were growing rapidly boosting growth in modern retailing in 2011
- Private label products for grocery retailers were most prominent across supermarkets and hypermarkets, accounting for between 15% and 30% of total value sales of these two sectors respectively

Sales in Retailing by Category (Store v/s Non Store)

The retailing segment has come up with various new forms of selling to the consumers. Store based retailing is the traditional form of retailing which is limited to the presence of a physical store. Non store based retailing has developed recently with e- commerce gaining traction. However, the share of sales of non store based retailing has been quite low but is on a gradual increase with the increasing literacy levels and changing lifestyle of the Indian population.

Exhibit 1: Sales in Retailing by Category (INR billion): 2006-2011



Source: Industry sources and Secondary Research

- Store based retailing accounted for the major share of sales in retail by category and comprised nearly 99.2% of all retail sales in 2011
- Store based retailing grew by 14% during 2010-11 as compared to 33.3% for non-store retailing
- Overall the retail sector grew by 14.2% during 2010-11
- Over the period of 2006-11, store-based retailing grew at a CAGR of 12.6% as compared to 24.5% for non-store retailing whereas the CAGR for the retail sector as a whole was 12.7% for the period 2006-11
- Overall, store–based retailing has grown by 81.2% in absolute terms in the period 2006-11 and non-store retailing has grown by a phenomenal 200% during the same period.
- The retail sector as a whole has grown by 82% in absolute terms from 2006 to 2011.

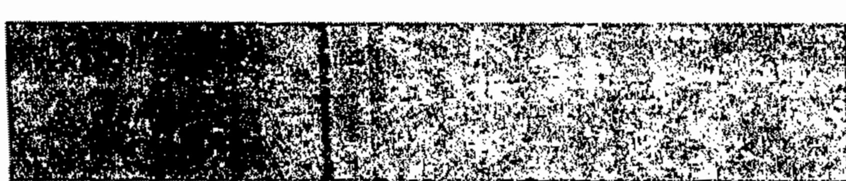
Share of Verticals in Overall and Organized Retail

The organized retail segment has tried to increase its offerings and make itself a one stop shop for its consumers. Traditionally the food items formed the largest share of the retail segment, but with the organized sector coming up the share of verticals has seen a change with the maximum share taken by the apparels segment.

Exhibit 2: Share of Verticals in overall and organized retail

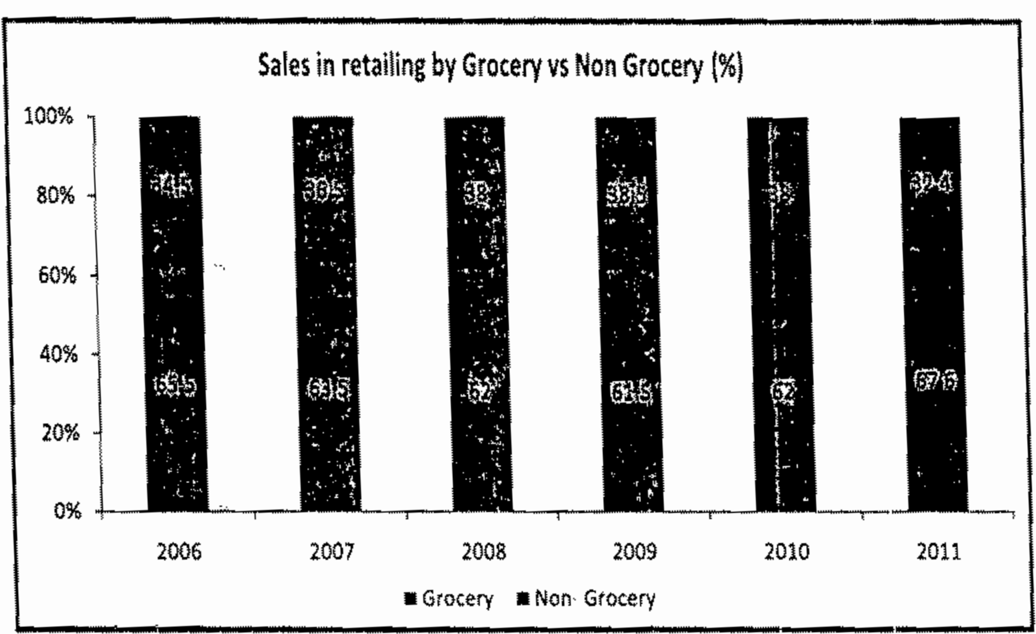
Verticals	Total Retail (2011-12)		Organized Retail (2011-12)		
	Market Size (INR Billion)	Percentage Share	Market Size (INR Billion)	Percentage Share	ORP
Food and Grocery	16,342	70%	390	24%	2.4%
Apparel	2,727	12%	563	35%	20.6%
Consumer Durables, Mobile and IT	1,358	6%	320	20%	23.6%
Home Décor and Furnishing	1,014	4%	60	4%	5.9%
Beauty, Personal and Healthcare	1.238	5%	160	10%	12.9%
Pharmacy	298	1%	30	2%	10.1%
Jewellery, Watches and Eye Care	940	4%	130	8%	13.8%
Footwear	605	3%	98	6%	16.2%
Books and Music	149	1%	16	1%	10.7%
TOTAL	23,433	100%	1,607	100%	7.0%

Source: Central Statistical Office (CSO), National Sample Survey Office (NSSO), YES BANK Analysis



- Food and grocery accounts for more than two-thirds of the overall retail in India with a share of approximately 70% of the total market size
- However, the Organized Retail Penetration (ORP) in this vertical is the lowest at 2.4 %. This vertical is dominated by kirana stores (mom and pop stores), cart vendors and wet markets in the unorganized space.

Exhibit 3: Sales in retailing by category (2006-11)



Source: Industry sources and Secondary Research

- During the period 2006 to 2011, grocery retailing has maintained a steady share between 65% to 68% of the total retail sales
- During the same period, non- grocery retailing accounted for between 32% to 34% of the total retail sales
- However the trend has been contrary for the two cases. The share of grocery retailing has increased from 2006-11, while that of non- grocery has declined over the same period

Sales in Retailing by Category (Grocery v/s Non Grocery)

- In store-based retailing, which accounts for 99% of all sales, grocery retailers have the major share in sales with 66% share in 2010-11.
- Non-Grocery retailers accounted for 34% of the total sales during the same period
- Sales by grocery retailers grew by 14.8% in 2010-11 and that of non-grocery retailers grew by 12.8% with the overall growth in store-based retailing at 14.1% during the same period
- Grocery retailers grew at a CAGR of 12.9% over the period 2006-11 whereas non-grocery retailers grew at 12.1% during the same period. Store-based retailing as a whole grew at a CAGR of 12.6% during 2006-11
- In absolute terms grocery retailers grew by 84.3% and non-grocery retailers grew by 72.5% between 2006 and 2011, with the overall growth of the store-based retail segment pegged at 80.1%

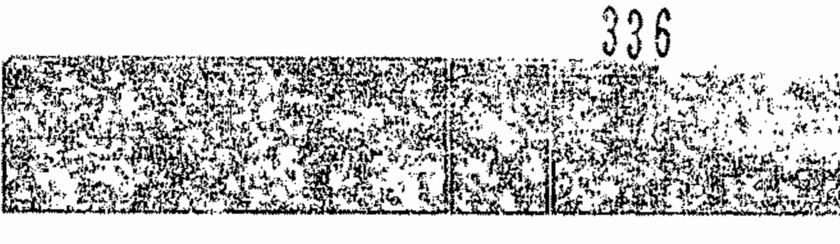
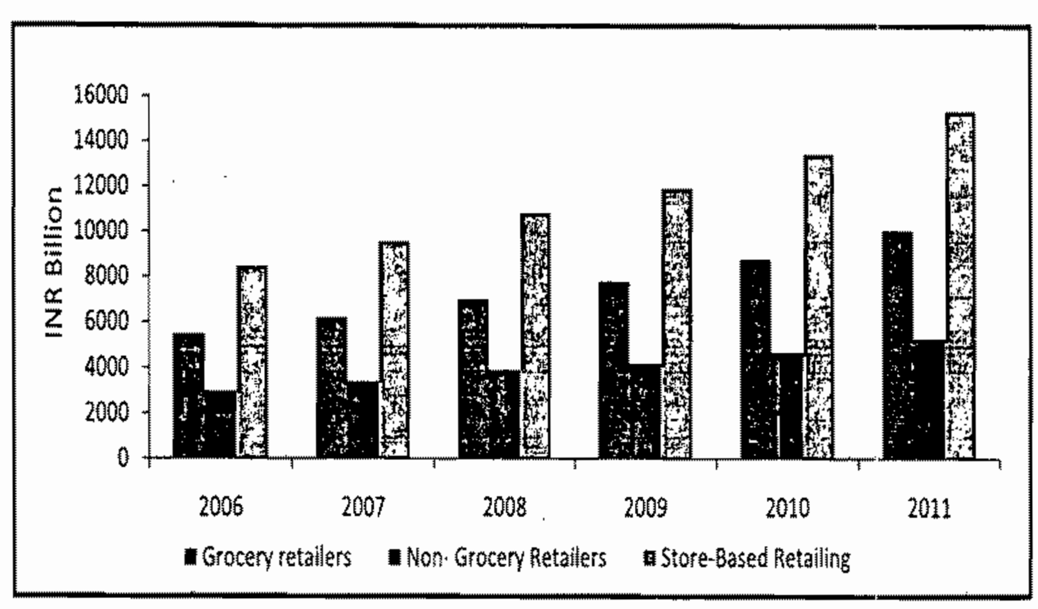


Exhibit 4: Sales in store based retailing by category: 2006-2011



Source: Industry sources and Secondary Research

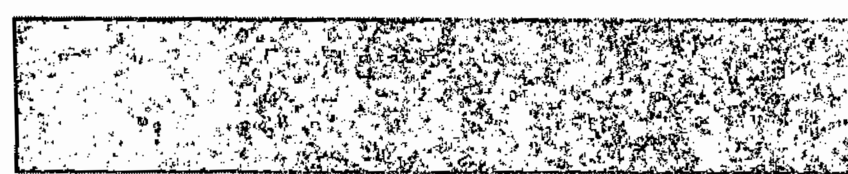
Sales in Grocery Retailers by Category (Modern vs Traditional)

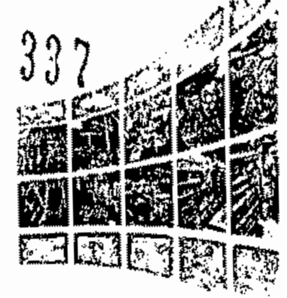
- The Indian retail market has traditionally been dominated by the mom and pop stores which make major household goods available in the immediate vicinity. But with the advent of new concepts in the retail format which are better organized, the sales can be seen shifting towards the modern retail stores.
- However, in no case do these formats have the potential to completely wipe out the existence of these kirana stores as they do not reach the smallest towns of the country. Even in the metro cities the location of the traditional and modern formats is totally varied. Furthermore, the Indian consumers tend to do a lot of impulse buying, for which the traditional format is preferred.

Exhibit 5: Sales in Grocery Retailers by Category: 2006-2011 (INR billion)

	2006	2007	2008	2009	2010	2011
Modern Grocery Retailers	68	125.4	170.4	145.4	180.3	210.6
Convenience stores	5	8	12	11	11	14
Forecourt retailers	1	1.4	1.4	1.4	1.3	1.6
Hypermarkets	22	41	58	70	93	110
Supermarkets	40	75	99	63	75	85
Traditional Grocery Retailers	**5435**	**6045**	**6830**	**7630**	**8640**	**9920**
Food/Drink/Tobacco specialists	1220	1410	1630	1860	2160	2540
Independent small grocers	3960	4360	4890	5420	6080	6920
Other Grocery Retailers	255	275	310	350	400	460
Grocery Retailers	**5503**	**6170.4**	**7000.4**	**7775.4**	**8820.3**	**10130.6**

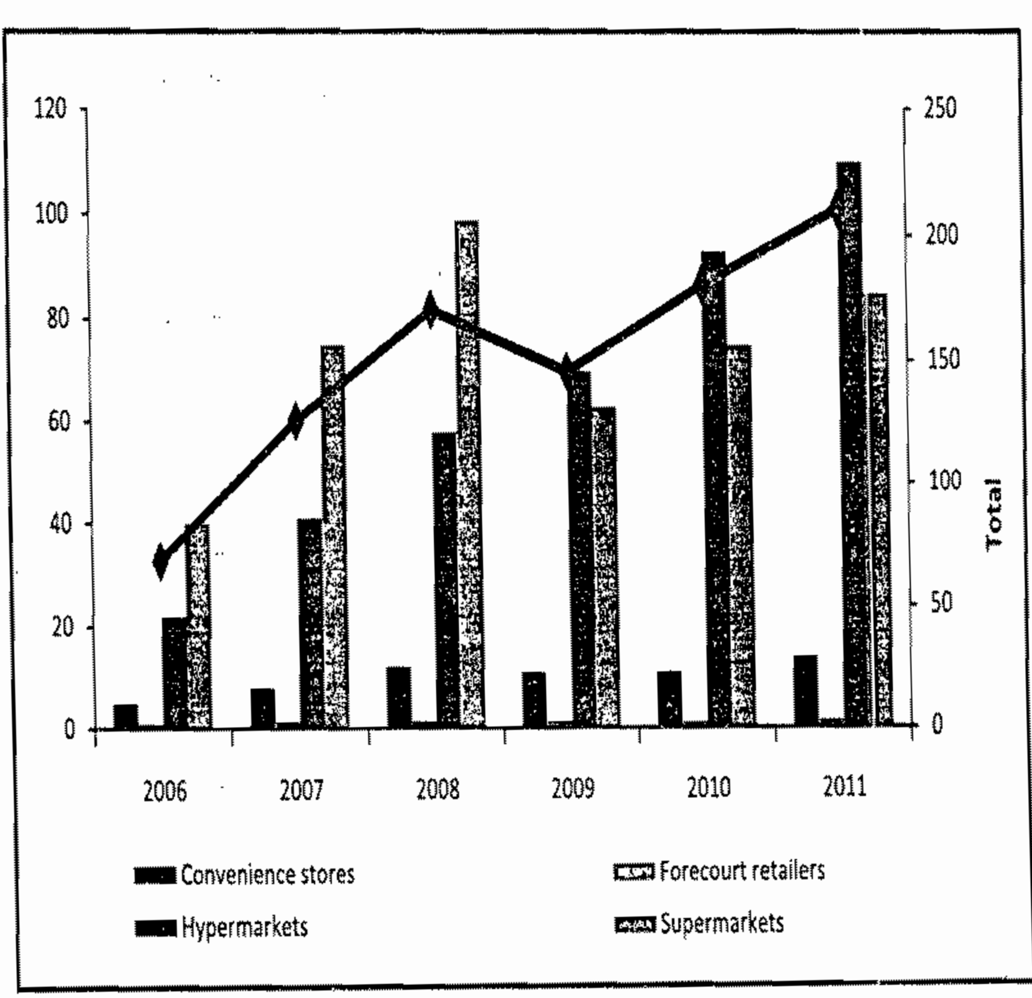
Source: Industry souces and Secondary Research





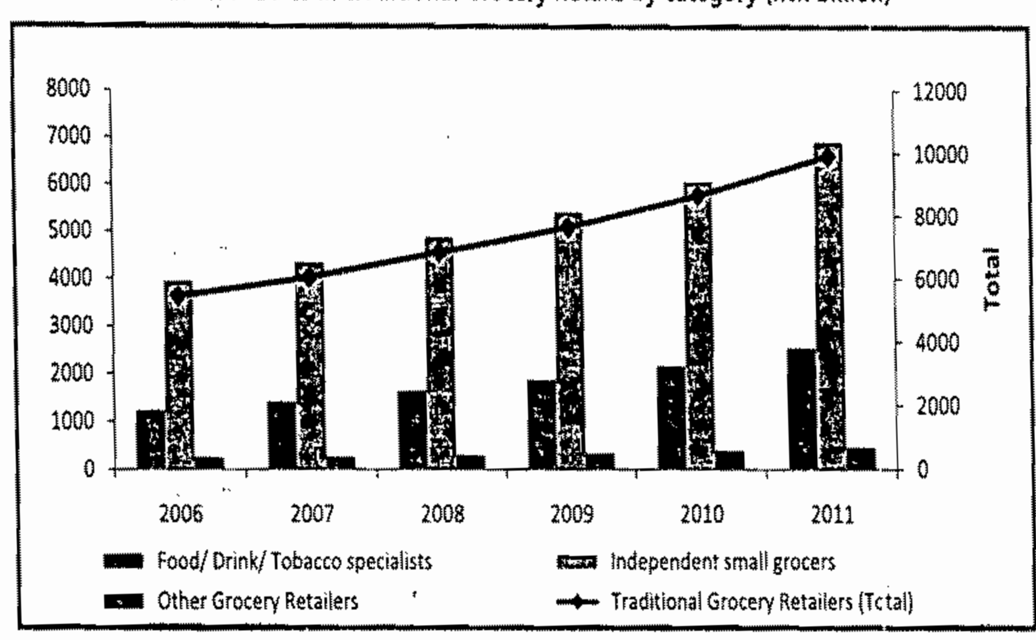
- Independent small grocers such as kirana stores remained the largest channel for grocery retailing in 2011, representing almost 68% of total value
- Hypermarkets saw strong and steady growth in current value terms in 2011, growing by 18.2% and had a CAGR of 37.9% between 2006 and 2011
- Supermarkets saw strong growth in 2011 with a 13.3% current value terms increase and a 16.2% CAGR between 2006 and 2011. This growth was mainly driven by increased sales per outlet in 2011.
- The contribution of grocery products from hypermarkets and supermarkets increased in 2011 reaching 68% and 73% of current value sales respectively.
- Convenience stores saw growth of 25% in current value terms in 2011.
- The small grocery retailers environment, which is dominated by kirana stores (independent small grocers), was still the largest contributor to sales in grocery retail.
- However, the independent grocery retailers grew at 13.8% in 2010-11 with a CAGR of 11.8% during 2006-11

Exhibit 6: Sales in Modern Grocery Retails by Category (INR billion)



Source: Industry sources and Secondary Research

Exhibit 7: Sales in Traditional Grocery Retails by category (INR billion)



Source: Industry sources and Secondary Research

- Value sales of the traditional grocery retailers accounted for 98% of sales in 2011
- Traditional grocery retailers as a whole grew at 14.8% during 2010-11 whereas as modern grocery retailers exhibited a growth of 16.8% during the same period.
- In CAGR terms, the growth of Modern grocery retailers was almost double at 25.3% during 2006-11 as compared to that of Traditional grocery retailers which was 12.7% during the same period
- The total contribution of modern grocery retailers expanded to 2% of overall sales value in grocery retailing, from less than 1% in 2005.In terms of number of outlets the traditional stores accounted for 98% share among grocery retailers.

Exhibit 8: Percentage value growth in sales (2006-2011)

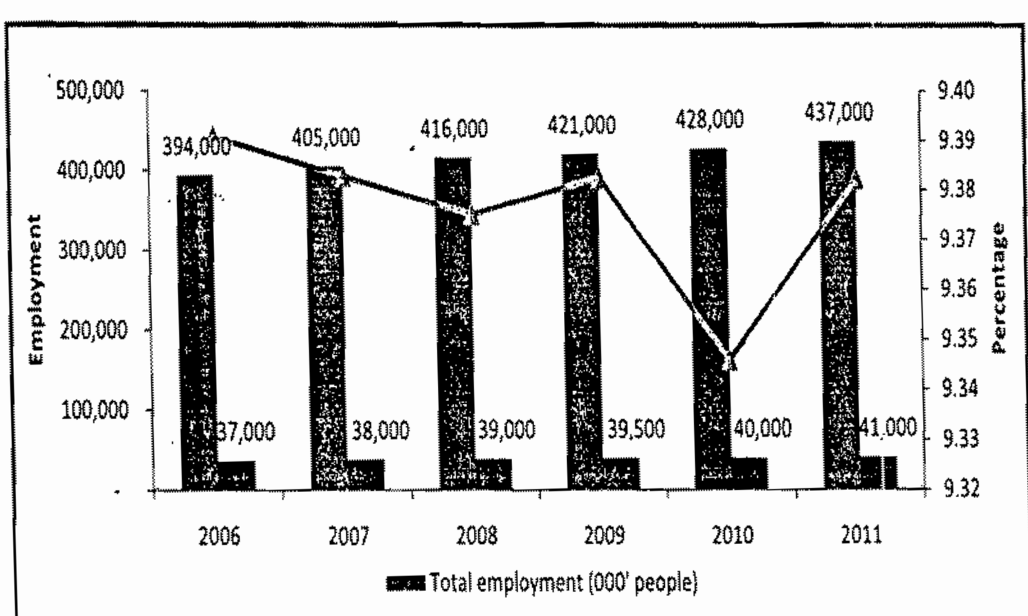
	2010-11	2006-11 CAGR	2006-11 Total
Modern Grocery Retailers	16.1	25.6	212.5
Convenience stores	25.1	23.4	186.3
Forecourt retailers	27.4	7.3	42.4
Hypermarkets	17	38.3	406.2
Supermarkets	13.4	16.4	113.5
Traditional Grocery Retailers	**14.9**	**12.8**	**82.7**
Food/Drink/Tobacco specialists	17.6	15.8	108.4
Independent small grocers	13.9	11.8	74.9
Other grocery retailers	15.5	12.5	80
Grocery Retailers	**14.9**	**13**	**84.3**

Source: Industry sources and Secondary Research

Employment in Retailing

- The employment opportunities in the retail sector are definitely on the rise but organized retail is yet to become a preferred career option for most of India's educated class.

Exhibit 9: Employment in Retailing 2006-11



Source: Industry sources and Secondary Research

- The overall employment share of retail in India has hovered between 9.3% to 9.4% from 2006 to 2011
- In 2011, the retail sector provided employment to 41,000 people as compared to 37,000 in 2006 growing at a CAGR of 2%

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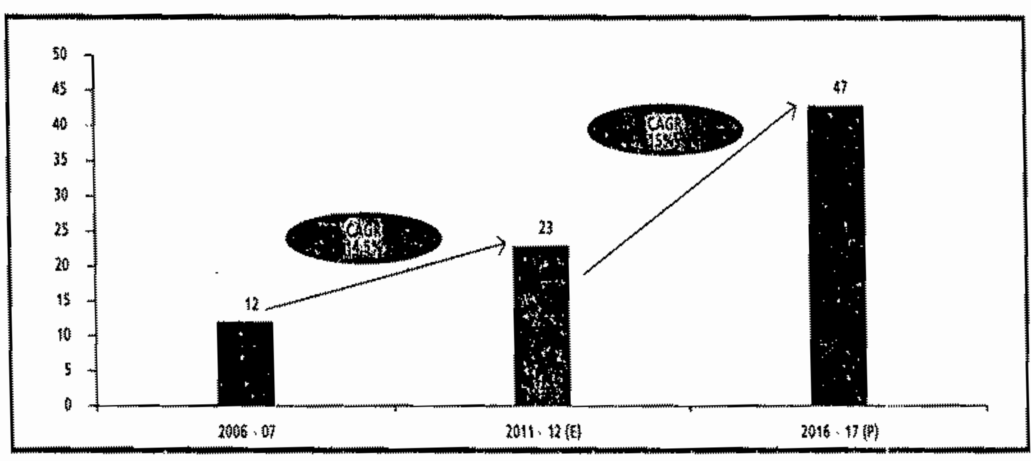
Retail Sector – Future Prospects

- The overall retail market (organized and unorganized) is expected to grow at a compounded rate of 15 % over the next 5 years from INR 23 trillion in 2011-12 to INR 47 trillion in 2016-17.

Overall Retail Growth in India

Exhibit 10: Retail growth in India (INR trillion)



E: Estimate, P: Projected

Source: Central Statistical Office (CSO), National Sample Survey Office (NSSO), YES BANK Analysis

- Organized retail is expected to grow faster than total retail at 24 % by 2016-17 as compared to 15% growth of total retail during the same period
- This growth will be driven by increasing affluence among urban consumers, growing preference for branded products and higher aspirations among youth.
- On the supply side, this growth will be supported by expansion plans of existing players and the entry of new players.
- Consequently, organized retail penetration is likely to increase to 10% in 2016-17 from 7 % in 2010-11.

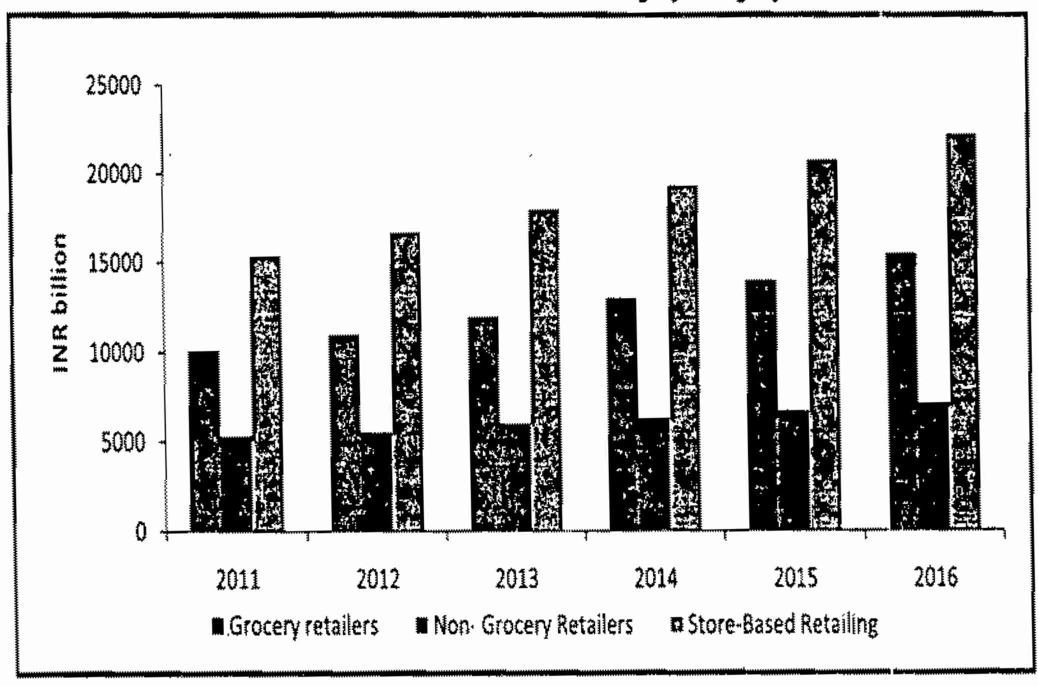
Exhibit 11: Organized Retail Penetration

	2006-07	2011-12	2016-17 (P)
Total Retail	INR 10 trillion	INR 23 trillion	INR 47 trillion
	14.5% → / 21% →	15% → / 24% →	
Organized Retail	INR 0.6 trillion	INR 1.6 trillion	INR 4.8 trillion
ORP	5.4%	7%	10%

Source: Central Statistical Office (CSO), National Sample Survey Office (NSSO), YES BANK Analysis

- It is expected that store-based retailing will witness a CAGR of 7.6% during 2011-16 and will grow by 44% in absolute terms over this period
- Within store-based retailing, grocery retailers are forecasted to grow at a CAGR of 8.9% during 2011-16 and non-grocery retailers will grow at 6% in current sales value terms

Exhibit 12: Forecast Sales in store based retailing by category: 2011-2016



Source: Industry sources and Secondary Research

Exhibit 13: Forecast sales in grocery retailers by category: 2011-16

(INR billion)	2011	2012	2013	2014	2015	2016
Modern Grocery Retailers	211	233	271.2	303.4	337.7	377
Convenience stores	14.5	6	19	21	24	30
Forecourt retailers	1.5	2	2.2	2.4	2.7	3
Hypermarkets	110	130	150	170	190	210
Supermarkets	85	95	100	110	121	134
Traditional Grocery Retailers	9860	10800	11850	12690	13630	14680
Food/Drink/Tobacco specialists	2500	2800	3200	3500	3800	4300
Independent small grocers	6900	7500	8100	8600	9200	9700
Other grocery retailers	460	500	550	590	630	680
Grocery Retailers	10071	11033	12121.2	12993.4	13967.7	15057

Source: Industry sources and Secondary Research

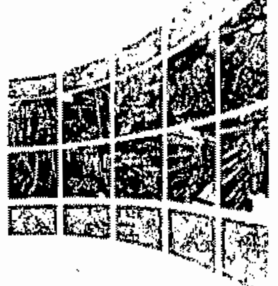
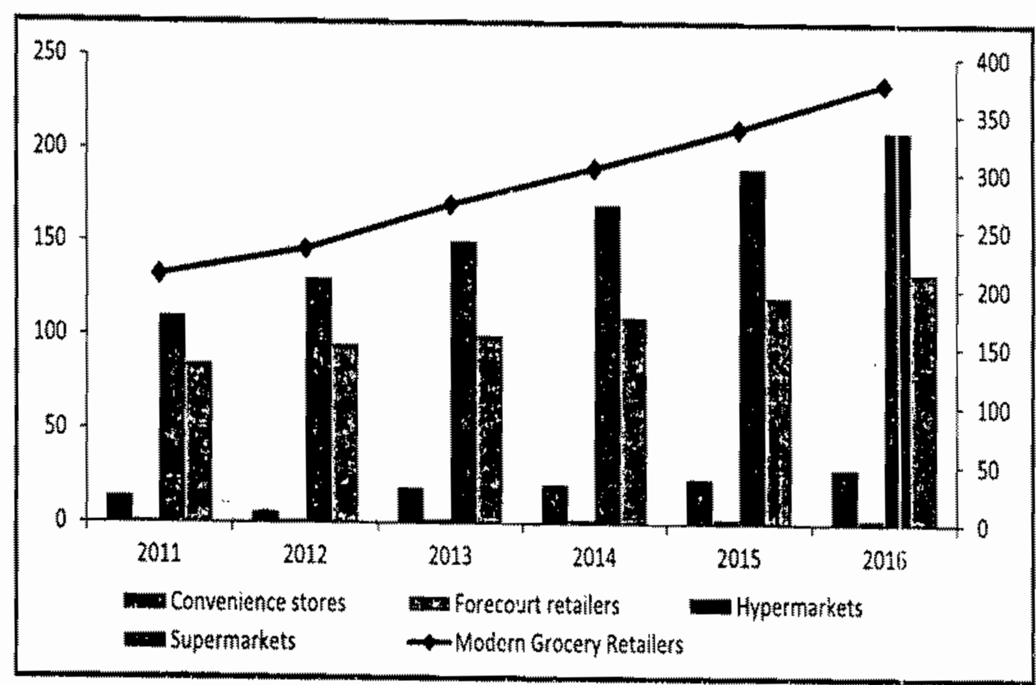
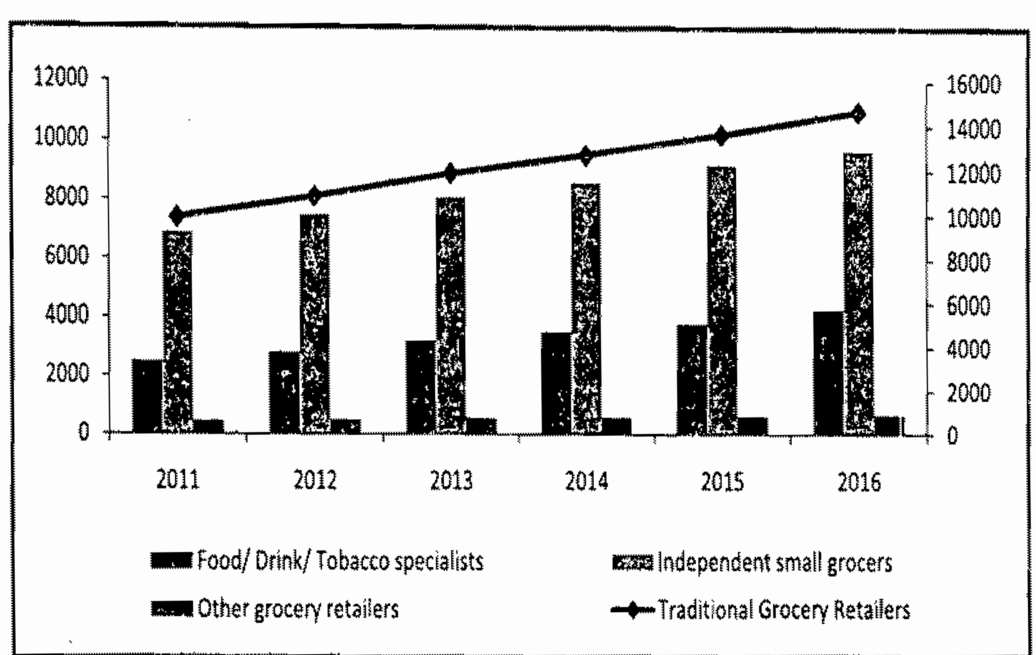


Exhibit 14: Forecast Sales for modern grocery retailers by category (INR billion)



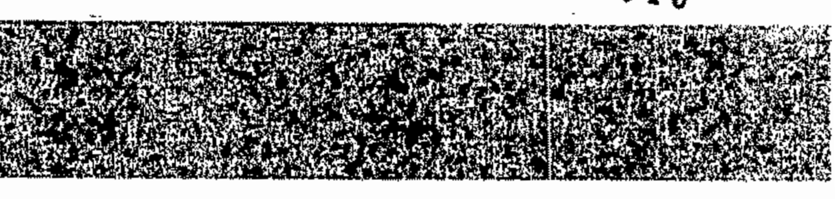
Source: Industry sources and Secondary Research

Exhibit 15: Forecast Sales for traditional grocery retailers by category: (INR billion)



Source: Industry sources and Secondary Research

- Among the traditional grocery retailers, kirana stores will continue to be the largest contributor to value share by 2016, expected to account for a 61% share of constant value sales
- In terms of outlet numbers independent small grocers will account for 74% share in 2016
- Hypermarkets are expected to see the fastest growth between 2011-16 with a CAGR of 13.4% and 87.4% in absolute terms

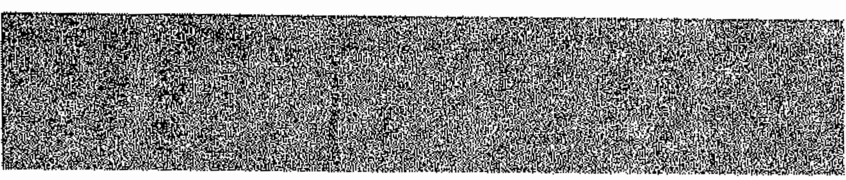


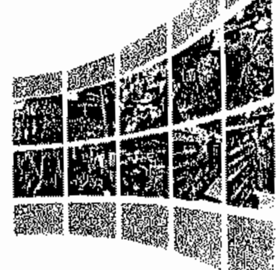
- Modern Grocery Retailers as a whole would grow at a CAGR of 11.7% between 2011-16 as compared to 8.2% for traditional grocery retailers.

Exhibit 16: Forecasted sales in grocery retailers by category: Percentage growth (2011-16)

	2011-16 CAGR	2011/16 TOTAL
Modern Grocery Retailers	11.7	73.8
Convenience stores	12.8	82.5
Forecourt retailers	12.7	82.2
Hypermarkets	13.4	87.4
Supermarkets	9.1	54.3
Traditional Grocery Retailers	8.2	48.4
Food/Drink/Tobacco specialists	10.9	67.4
Independent small grocers	7.2	41.4
Other grocery retailers	8.1	47.9
Grocery Retailers	8.3	48.9

Source: Industry sources and Secondary Research





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Retail – Policy Scenario

Policy before Opening up of FDI in Retail

- Foreign Direct Investment in Multi Brand Retail Trading (MBRT) was prohibited.
- Foreign Direct Investment (FDI), up to 51%, in the Single Brand Retail Trading (SBRT) sector was permitted, under the Government/Foreign Investment Promotion Board (FIPB) route, subject to the following conditions:
  - (a) Products to be sold should be of a 'Single Brand' only.
  - (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
  - (c) 'Single Brand' product-retailing would cover only products which are branded during manufacturing.
  - (d) The foreign investor should be the owner of the brand

- Earlier this year, the government allowed 100% FDI in single brand retail with a rider that foreign brands would mandatorily have to source 30% of their requirements from Small and Medium Enterprises (SMEs).

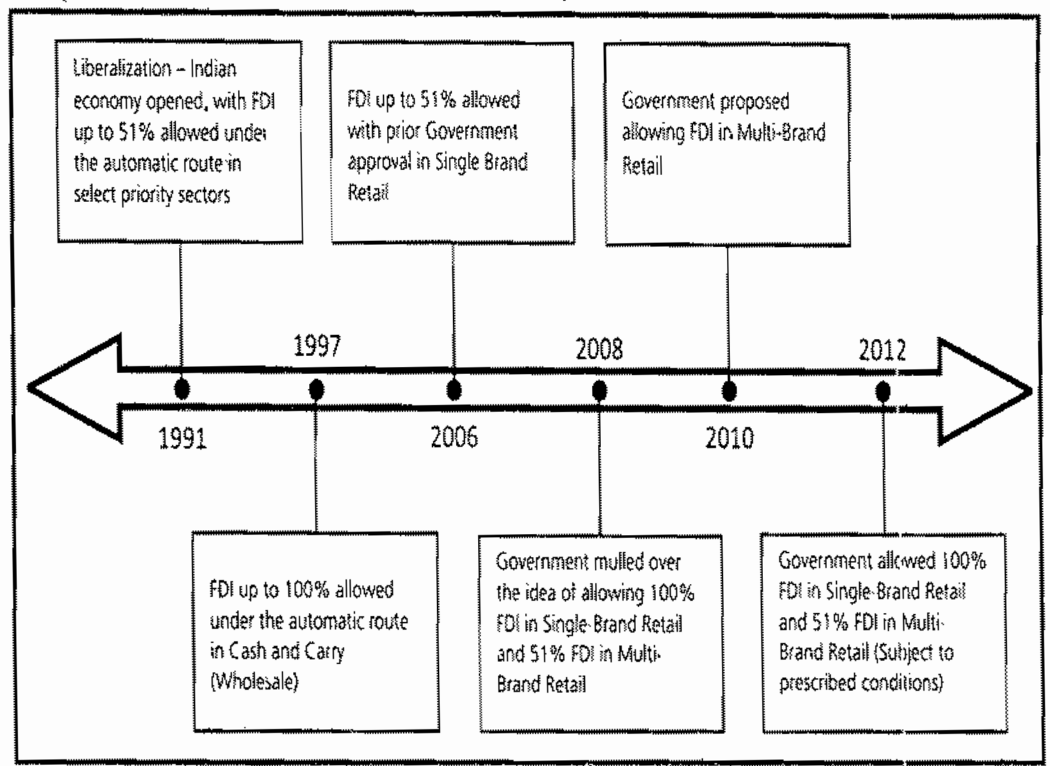
Multi-Brand Retail FDI Policy in Other Countries

Exhibit 17: Benefits of FDI in other countries

Country	FDI limits	Benefits	Remarks
China	100%	• First permitted in 1992 with foreign ownership restricted to 49%, progressively lifted with no restrictions now. • Over 600 hypermarkets opened between 1996 and 2001 • The number of small outlets (equivalent to 'kiranas') increased from 1.9 million to over 2.5 million • Employment in the retail and wholesale sectors increased from 28 million people to 54 million people from 1992 to 2001.	Impressive growth in retail and wholesale trade.
Thailand	100%	• Referred to as a country where FDI had an adverse effect on the local retailers. • Has limited capital requirement for retail and wholesale outlets.	Growth in agro processing industry
Russia	100%	• Supermarket revolution took place in 2000. • Heavy growth registered.	
Indonesia	100%	• Modern retail took off in 1990s. • No limit on number of outlets • Matahari is leading chain.	
Brazil, Argentina, Singapore & Chile allow 100% FDI in retail sector while Malaysia permits FDI to a certain limit.			

Source: Industry sources and Secondary Research

Current FDI Policy Exhibit 18: Timeline of FDI Policy in Retail in India



Source: YES BANK Analysis

The Government of India launched a package of landmark reforms on September 14, 2012 allowing Foreign Direct Investment in multi-brand retail among other sectors.

The key highlights of the Policy with respect to Multi-Brand Retailing are as follows:

- FDI upto 51% permitted under Government approval route (i.e. prior approval from Government of India before induction of FDI).
- Fresh agricultural produce including fruits, vegetables, flowers, grains and meat products although unbranded may be traded
- Minimum investment of USD 100 million to be infused by Foreign Investor
- At least 50% of the Foreign Investment to be invested in back-end infrastructure within 3 years of induction of FDI to include investments made towards
  - Processing
  - Manufacturing
  - Distribution
  - Design Improvement
  - Quality Control
  - Packaging
  - Storage
  - Warehousing
  - Agriculture market produce infrastructure and logistics

- Expenditure on land cost and rentals, if any, would not be counted towards back-end infrastructure
- Minimum sourcing of 30% of manufactured/processed products from Small Scale Industries (units with gross value of Investment in Plant & Machinery not exceeding USD 1 million)
- The procurement requirement has to be met in the first instance within an average period of 5 years beginning 1st April of the year during which first tranche of FDI is received and is to be met on an annual basis thereafter
- Government of India to have the first right to procurement of agricultural products
- Self Certification by the Company on compliance with above conditions and these may be verified by the Government
- The decision to permit setting up of retail outlets has been left to the state governments.
    - ✓ These outlets may be set up in cities with population of more than 1 million as per 2011 census (including an area of 10 sq. km around the municipal/urban limits)
    - ✓ For States/UTs not meeting the above criteria, outlets may be setup in cities as decided by the respective State Governments.
- Retail trading in any form, by means of e-commerce, would not be permissible for companies with FDI engaged in the activity of multi-brand retailing.

The States/Union Territories that have coveyed acceptance for implementation of the policy are as follows:

- ✓ Andhra Pradesh
- ✓ Assam
- ✓ Delhi
- ✓ Haryana
- ✓ Jammu & Kashmir
- ✓ Maharashtra
- ✓ Manipur
- ✓ Rajasthan
- ✓ Uttarakhand
- ✓ Daman & Diu and Dadra & Nagar Haveli (Union Territories)

FDI in Multi-brand Retail – Impact on Food, Agriculture and Agribusiness

Agri –Infrastructure Creation

- Provision of adequate infrastructure, in terms of both quantity and quality, is very essential for rapid achievement of sustainable economic growth.
- While the precise linkages between infrastructure and development are yet to be firmly established, it is estimated that infrastructure capacity grows in step with economic output. A 1% increase in the stock of infrastructure is associated with a 1% increase in GDP across all countries (Summers and Hastens, 1991).
- Similarly access to appropriate infrastructure services is considered as the most important factor to growth of Agribusiness.
- Provision of adequate and quality infrastructure is necessary for increasing the productivity and efficiency of agri value chain. The spread of technology in agriculture depends critically on both physical and institutional infrastructure.
- It is estimated that worldwide 15 % of crop produce is lost between the farm gate and the consumer because of poor roads and inappropriate storage facilities alone (World Bank, 1997).
- Retailing is a technology intensive industry. Successful retailers use their distribution and information systems closely to predict consumer demand, shorten lead time, and reduce inventory holding and hence save cost.
- The entry of modern retail formats in India will undoubtedly bring with it an intensive infrastructure creation.
- More focus will lie on cold chain infrastructure warehouse distribution in order to strengthen the supply chain.

Current Scenario of Agri Infrastructure in the Country

- The warehouses in our country have been built following traditional norms and without proper specification. They lack in optimal size, adequate design, ventilation facility, inventory management and storage system.
- According to latest estimates, the warehousing capacity available in India, in public, co-operative and private sector is about 108.75 million MT and another 35 million MT warehousing capacity is required during the Twelfth Five Year Plan period for the storage of all major crops. Thus there exists a huge demand supply mismatch.
- Warehouse accounts for the largest share of infrastructure segments in the logistic industry claiming around 6-7%.
- Though India is the second largest producer of fruits and vegetables (about 200 million MT), it has a very limited integrated cold-chain infrastructure, with only 5,386 stand-alone cold storages, having a total capacity of 23.6 million MT.
- Lack of adequate storage facilities causes heavy losses to farmers in terms of quality degradation and wastage of produce in general, and of fruits and vegetables in particular. Post-harvest losses of farm

produce, especially of fruits, vegetables and other perishables, have been estimated to be over INR 1 trillion per annum, 57% of which is due to avoidable wastage and the rest due to avoidable costs of storage and commissions.

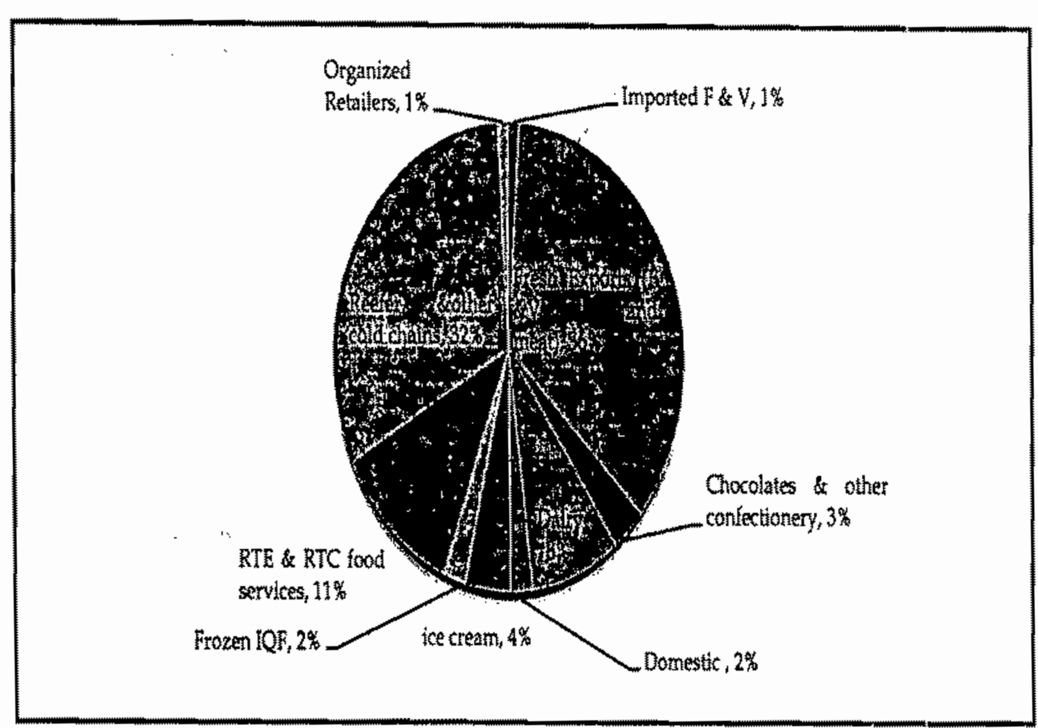
- As per industry estimates, 35-40% of fruits and vegetables and nearly 10% of food grains in India are wasted. Though FDI is permitted in cold-chain to the extent of 100%, through the automatic route, in the absence of FDI in front-end retail, investment flows into this sector have been insignificant.
- The warehousing industry in highly fragmented in India with the organized segment having an estimated share of almost 90% of the total warehouse capacity.
- In terms of value, market size of warehousing in FY 09 was INR 19,200 crore and it grew to INR 22,810 crore in FY 11 and is expected to grow to INR35,100 crore in FY 16 with a CAGR of 9 %. In this, only 12% accounts for agri warehousing and the rest 88% is for industrial purposes.
- The key growth drivers for the cold storage industry in India are increasing demand for food products, recent developments in processed food industry, growing EXIM trade in food products, organized retail industry, emergence and growth in retail and food service industry and regulatory impetus from government. Some of the major risks/threats involved in this industry are due to changing demand patterns and seasonal variation competitive pressure, location risks, safety issues and handling of commodities.
- India has nearly 23 million MT of cold storage facilities where as it currently needs at least 9-10 million MT more of capacity.
- Uttar Pradesh, West Bengal and Punjab account for around 70% of the capacity.
- The overall market size of the cold storage segment is expected to grow at a CAGR of 16-17% in the next 3-4 years.

Exhibit 19: Current status of warehousing capacity in India

Name of the Organization/Sector	Storage Capacity (in million MT)
Food Corporation of India (FCI)	32.05
Central Warehousing Committee (CWC)	10.07
State Warehousing Committee (SWC)	21.29
State Civil Supplies	11.3
Cooperative Sector	15.07
Private Sector	18.97
Total	108.75

Source: Government of India

Exhibit 20: Percentage distribution of Cold Chain sub sectors in India



Source: Ministry of Food Processing Industries (MoFPI), National Horticulture Mission (NHM), Agricultural and Processed Food Products Export Development Authority (APEDA)

Need for Warehousing

- An 11th Plan working group has estimated a total investment of INR. 64,312 crore in agricultural infrastructure. A storage capacity gap of 35 million tonnes has been assessed, requiring an estimated investment of INR 7,687 crore during the 11th Plan.
- There has been a record level of procurement of food grains in the last 4-5 years by government/FCI and due to this several states have been facing problems of covered storage capacity. In Rabi Marketing System (RMS) 2011-12, FCI procured around 281 lakh MT of wheat which was 30 lakh MT more than the earlier record procurement and procurement of rice in Kharif Marketing Season of 2010-2011 was around 335 lakh MT.

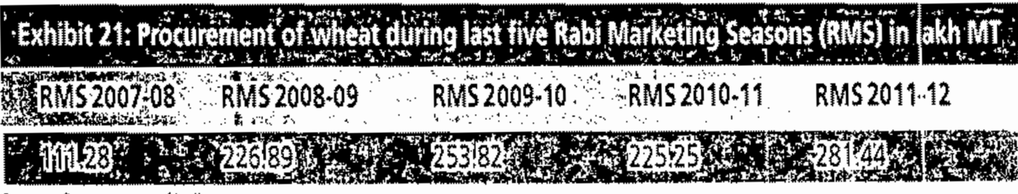


Exhibit 21: Procurement of wheat during last five Rabi Marketing Seasons (RMS) in lakh MT

RMS 2007-08	RMS 2008-09	RMS 2009-10	RMS 2010-11	RMS 2011-12
111.28	226.89	253.82	225.25	281.44

Source: Government of India.

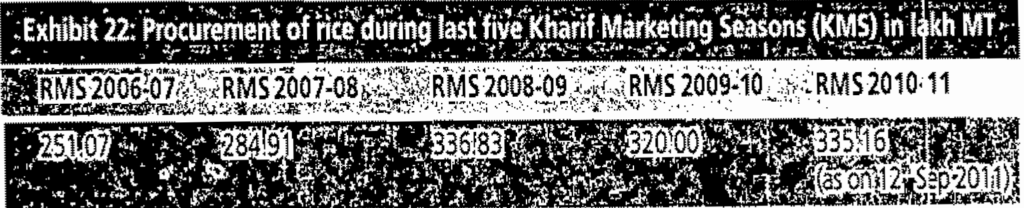


Exhibit 22: Procurement of rice during last five Kharif Marketing Seasons (KMS) in lakh MT

RMS 2006-07	RMS 2007-08	RMS 2008-09	RMS 2009-10	RMS 2010-11
251.07	284.91	336.83	320.00	335.16 (as on 12th Sep 2011)

Source: Government of India

- Analyzing the table above, availability and augmentation of storage capacity is one of the main priorities of Government of India.
- There is a dire need for the creation of sufficient modern warehousing capacity in the country to store and preserve food grains apart from construction of storage facilities like seeds and fertilizer.

Need for Cold Storages

- Since Indian agriculture is witnessing a major shift from traditional farming to horticulture, meat, poultry and dairy products and the demand for fresh and processed fruits and vegetables is increasing due to rising urban population and transforming consumption habits, the role of cold storages becomes critical.
- India currently has nearly 23 million MT of cold storage facilities where as it needs at least 9-10 million MT more capacity. Uttar Pradesh, West Bengal and Punjab account for around 70% of the capacity.
- Moreover, the existing cold storage facilities now available are mostly for a single commodity and around 80% of them are utilized for potato storage resulting in poor capacity utilization.

Exhibit 23: Commodity wise breakup of cold chain industry	
Potatoes	77.6%
Multi purpose	20.8%
Meat & Fish	0.8%
Fruits and Vegetables	0.4%
Milk & Milk Products	0.3%
Others	0.1%

Source: Industry Sources

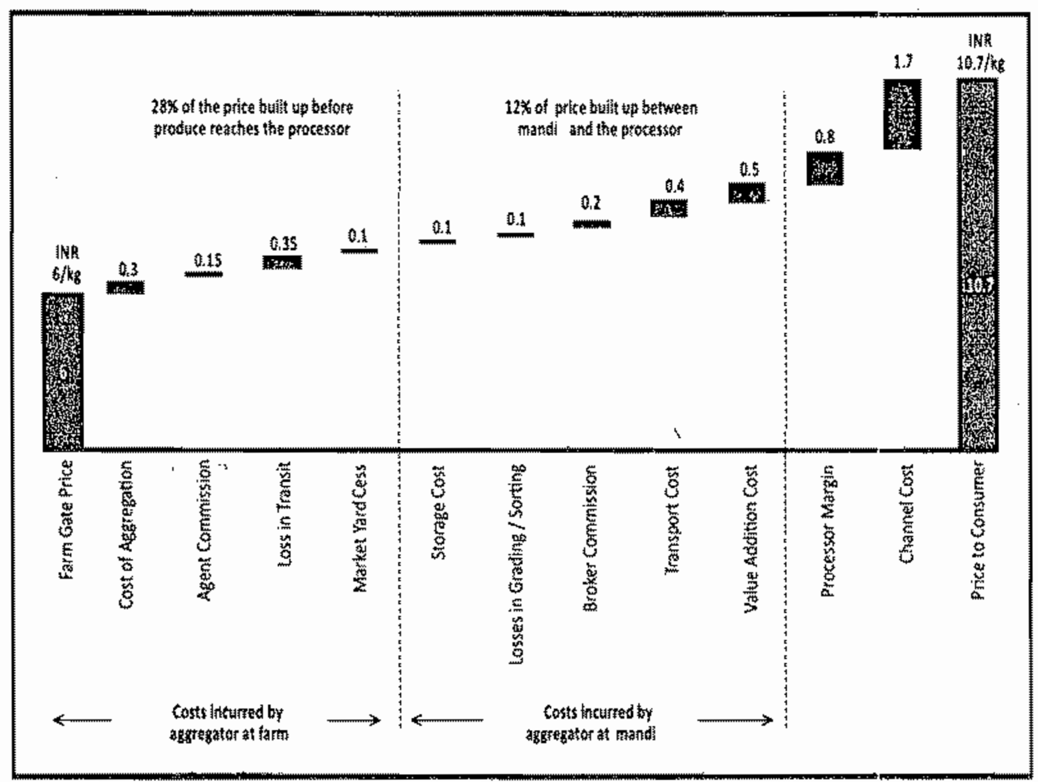
Role of FDI in Creating Infrastructure

- The Internal rate of Return (IRR) for agricultural warehouses in India is estimated to be around 18-20%.
- Building a civil structure comprises the major chunk of expense in an agriculture warehouse followed by land and land development while the operating cost is fairly distributed among employee cost, fumigation, electricity etc.
- Similar is the case with cold storages which demand huge investment for maintaining congenial temperature throughout the supply chain.
- The opening up of FDI in Retail will bring in investments in this field compulsorily as the modern retail formats will procure large quantities to gain economies of scale and will try to avoid wastages due to improper storage facilities.
- As the business of organized retailing of food matures, it would increase private investment in the area of supply chain infrastructure. This is also going to get a boost from the various schemes of the Government to incentivize rural infrastructure creation (Terminal Markets, Mega Food Parks, Rural Godowns etc.). This will benefit the farmers immensely by creating feasible and competitive marketing alternatives for their produce.

Building an Efficient Supply Chain

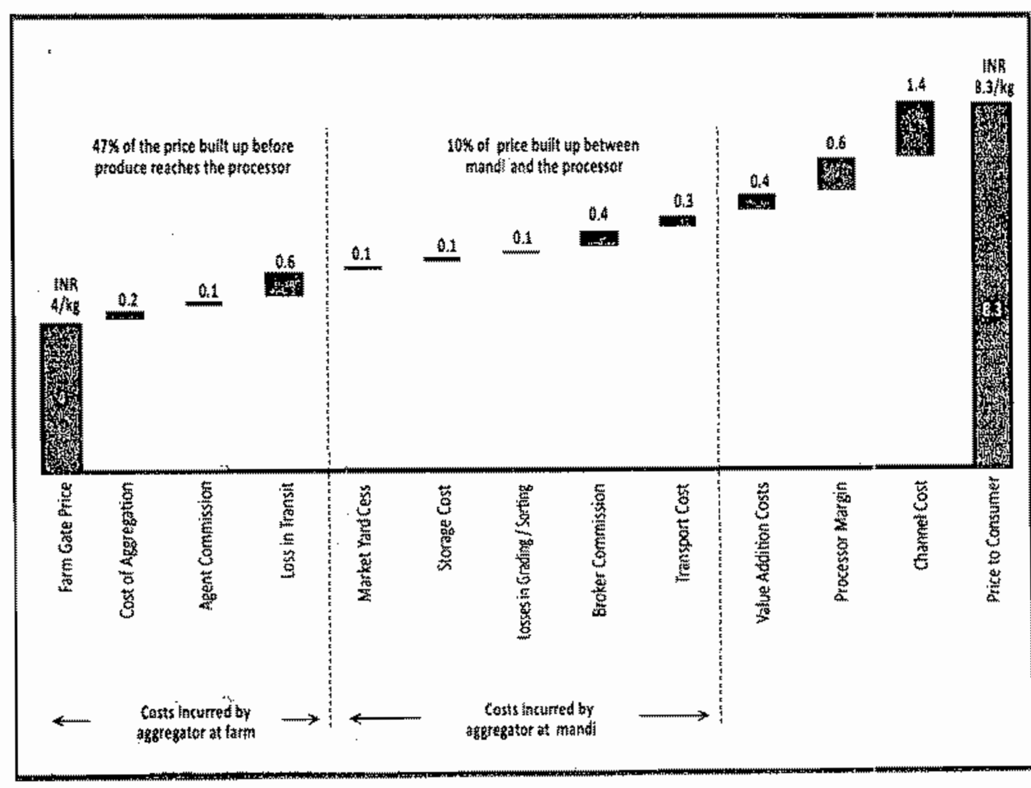
- Agricultural value chains have increasingly become complex over time. Market requirements rapidly change, driven by increasing demand, changing lifestyles and government policies.
- In response to these changing market requirements, value chains need to become more coordinated leading to more integration and concentration to achieve efficiency and minimize risks.
- Product and market standards change with time which in turn, require changes from various actors in the value chain that supply these products to meet market requirements.
- But this has not been the case with the Indian Agri supply chain which has by and large remained the same over the years, not incorporating the required changes for development and increased efficiency.
- The farmers in India receive a share of less than 30% for most of the foodgrains and 15-20% for horticultural produce, while in developed countries the share comes to around 50-70% for most of the commodities.
- This is basically because of the large number of intermediaries involved in the chain. Intermediaries, no doubt are an essential part of the chain and they add value to the commodities and help in aggregation.
- But this intermediation should essentially be limited to the level where value is actually being added. In India unnecessary intermediaries get involved along the chain resulting in margin payouts at various levels and losses due to multiple handling.
- The margins taken by the intermediaries are generally product specific and are higher for fresh produce, having shorter shelf life.
- For grains and cereals, around 28% margin is added to the cost, before the produce reaches the processors.
- Further costs are added when the produce is processed and passes through the Mandis. This cost accounts for a 12% increase. These margins considerably increase the prices of grains and cereals for end consumers.
- Similar is the case with fruits and vegetables where significant margins are added up to the cost of produce.
- But these margins are significantly higher in case of Fruits and Vegetables owing to their shorter shelf life and greater perishability. In case of fresh fruits and vegetables, around 47% margin is added to the cost of produce before it reaches for processing.
- Further margins are added up during processing and movement through different levels in Mandis. Generally, the prices of the produce double in such cases.

Exhibit 24: Illustration of price escalation observed for grains and cereals.



Source: Trade sources, Secondary Research

Exhibit 25: Illustration of price escalation observed for fruits & vegetables



Source: Trade sources, Secondary Research

Entry of players in the organized retail tends to make the supply chain more effective and efficient by:

- Sourcing directly from the farmers or atleast closer to the farm gate and eliminating the unnecessary intermediaries. This in turn results in better price realization to the farmers.
- Overall, farmers are bound to gain from the advent of the organized food retailers under a proper regulatory environment promoting direct procurement on one hand and machinery to prevent the exploitation of farmers on the other hand.

Exhibit 26: Between Farm and Fork

7 layers between Farmer and Consumer
Farmers / Producers
Direct Markets
Rural Primary Markets
Commission Agents 1 or 2 levels
Processors
Regulated Markets
Whole Sellers
Processors
Exporters
Retail Vendors
CONSUMERS

4 layers between Farmer and Consumer
Farmers / Producers
Collection, Value Addition, Sorting, Grading, Washing, Drying and Precooling
Regulated / Wholesale Markets (Lacking Grading and Pre-Cooling facilities)
Storage and Distribution Centers (Cold Storage)
Organized Retail Stores

Source: Economic Times

- Direct procurement also gives the farmers certain indirect benefits like knowledge of what needs to be produced when, technological inputs and access to credit on account of assured market etc.
- FDI in retail will eliminate or greatly reduce the role of middlemen and ensure a sustainable and reasonable price for both the farmer and the consumer by shortening the supply chain through increase in direct purchase.

Exhibit 27: Supply chain efficiency in direct procurement

Traditional Supply Chain		Disintermediated Supply Chain		Remarks
Channel Partner	Percentage Share	Channel Partner	Percentage Share	
Consumer Pays	100%	Consumer Pays	94%	Benefit to customer of 6%
Retailer Wastage	5%	Retailer Wastage	6%	Actual accountings
Retailer Margin	22%	Retailer Margin	25%	Retailer margin increased
Semi Wholesale	5%	Semi Wholesale	0%	Semi-whole seller eliminated
Wholesale Wastage	3%	Distribution	5%	Incurred cost on Distribution (Cold Chain)
Whole Seller Commission	8%	Whole Seller Commission	0%	Whole seller eliminated
Transit Wastage	5%	Transit Wastage	2%	Reduced by 3%
Village Consolidation	2%	Consolidation Expenditure	2%	Net savings
Post Harvest Wastage	8%	Post Harvest Wastage	4%	Net savings of 4%
Net to Farmer	42%	Net to Farmer	50%	Increased earnings by 8%
TOTAL	**100%**		**94%**	

Source: YES BANK Analysis

However, a counterview and separate study has shown the following:

- A look at the modern organized chains' initiatives of buying directly from farms rather than mandi's paints a sordid picture.
- Producing directly from farms has been costlier compared to procurement through middlemen at market.
- The reason being that the overhead costs for the retailer increases as he tries to construct and maintain storage facilities, invests in a front end infrastructure, pays for the transportation, pays the farmer more for a better quality produce taking the risk in the context that consumer might not actually be willing to pay a higher price for that quality as it is subject to discretion.
- Moreover, the administrative costs and control measures increase as larger and skilled manpower is required for administering the operations right from the fram level, an accounting system needs to be maintained and procurement at a large scale needs enhanced monitoring.
- The below given example shows the investment that a firm will have to make if it plans to buy either 20,000 tonnes of wheat or 5,000 tonnes of tomatoes.

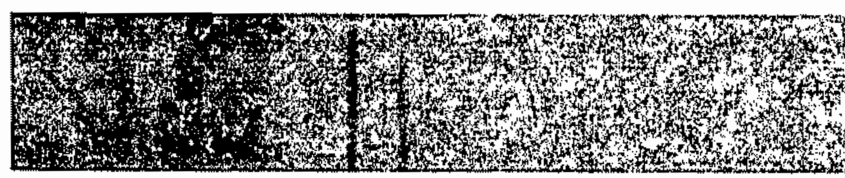


Exhibit 28 : Breakup of farm produce acquisition

S.No	Details	Method of Aggregation	Farmer Trade
1	No of Buying Units	7	1
2	Direct Manpower required	9	2
3	Outsourced Manpower required	17	2
4	Payment Terms	Spot	Credit
5	Quality Deductions Enforcement	Difficult	Acceptable
6	Ability to Stop Buying	Impossible	Easy
7	Pricing	MSP+	Market
8	Administrative Complexity	High	Low
9	Added Costs	Significant	None

Source: YES BANK Analysis

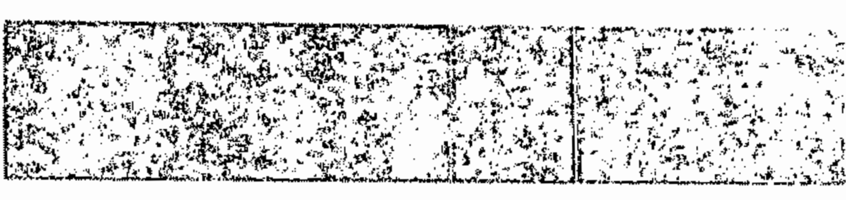
- The players in the organized retail sector will put in all efforts to reduce wastage at all levels by a substantial amount. FDI will bring in a spurt of investments in latest technologies for storage, handling, processing and market information.
- Fair grading weighment and payment would be the key areas of benefit for the farmers. This will also encourage the farmers to grow better quality produce as it would command better prices. The payment structure in most of the organized retail is prompt and inclusive of the cost of transportation. This is a great benefit to the farmer.
- As the organized retail focuses on good quality products, adulteration of food will be kept under check. There is a greater deal of transparency in organized retail and monitoring is much easier.
- On the farming front retailers can partner with farmers to enhance their farming practices by providing access to finance, technical support and inputs.

Impact on Food Inflation

- In the past few years the food inflation has shot up by a double digit growth and whenever the control measures have been suggested, they pertain to the supply side of the food chain.
- FDI in retail will give impetus to the backward linkages which is essential for controlling food inflation. Players in the organized retail sector will create adequate infrastructure facilities, thereby reducing wastages and increasing the supply of commodities, bringing down their prices considerably.

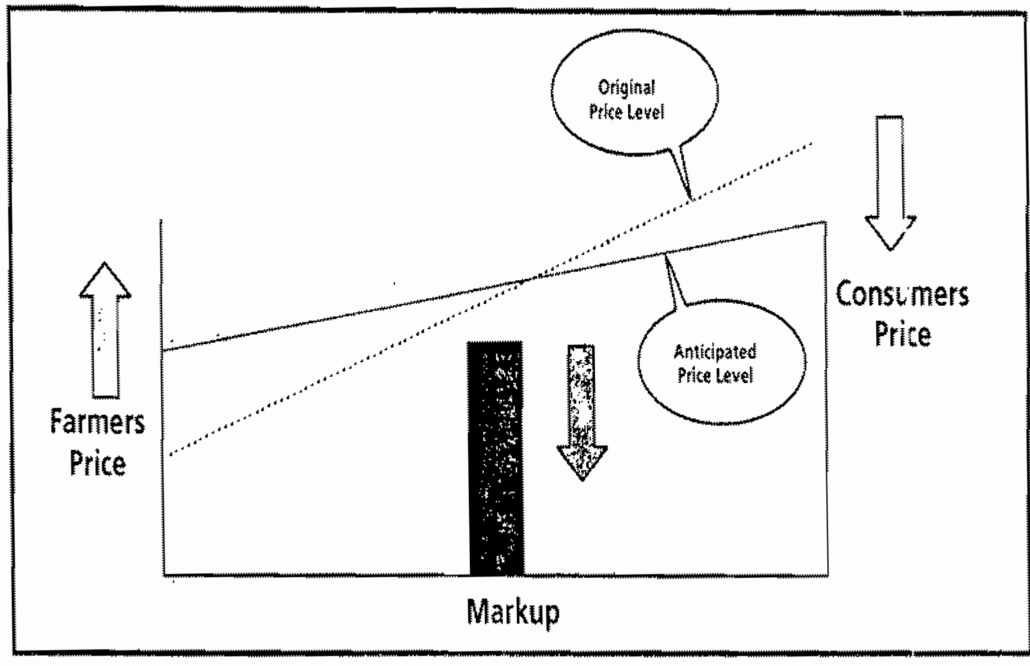
Impact on Consumers

- The strongest impact of organized retailing would be seen on the consumers. Along with the increase in disposable income and increased discretionary expenditure, the consumers will get better choice of formats



- Due to the Direct Procurement model followed by organized retailers, there would be substantial cost savings through disintermediation which would ultimately benefit the consumer.

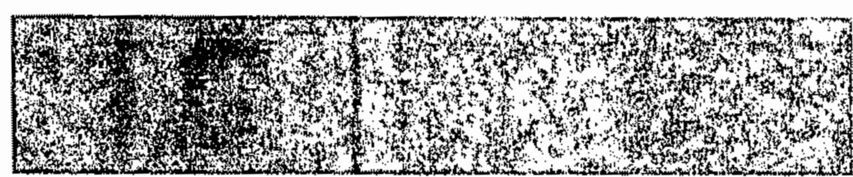
Exhibit 29: Illustration of effect on farmer and consumer prices due to direct procurement

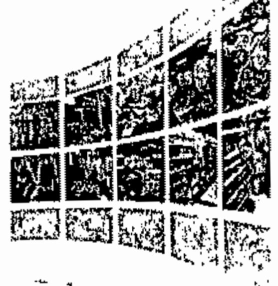


Source: Trade sources, YES BANK Analysis

Employment Opportunities

- Huge investments in the retail sector will see gainful employment opportunities in agro-processing, sorting, marketing, logistic management and the front-end retail business.
- Industry estimates suggest employment of one person per 350-400 sq.ft of retail space, which means nearly 1.5 million jobs will be created in the front-end alone in the next 5 years. Assuming that 10% extra people are required for the back end, the direct employment generated by the organized retail sector in India over the coming 5 years will be close to 1.7 million jobs. Indirect employment generated on the supply chain to feed this retail business will add millions of jobs.





Challenges and Recommendations

Challenges before the Organized Retail Sector

The organized retail sector has recently emerged from its nascent stage but has shown significant growth owing to the changing buying behavior of the Indian consumers. Retailing in India is gradually inching its way forward to become the next boom industry. But, the Indian educated class is yet to explore the options of a lucrative career in the organized retail sector. The challenges faced by the organized retail sector are:

- Shortage of desirable talent and lack of skilled manpower.
- The inefficiencies in the current supply chain and the presence of numerous intermediaries are difficult to curtail.
- The quality of produce demanded by the consumer is still far from what our framers produce.
- The rapid growth of the organized retail segment is checked by the numerous clearances that are required to set up a retail outlet
- Lack of basic infrastructure like roads, power, water etc. is a major shortcoming that needs to be addressed in order to procure as well as supply on a pan India basis.

Policy Recommendations

- Modernization of traditional markets through Public Private Partnerships.
- Modernization of APMC markets with incorporation of the Model Act in all the states.
- Initiating a uniform license regime applicable nationwide and doing away with the numerous permits that are currently required for the establishment of retail outlets.
- Replication of the metro Cash-and-Carry outlets of China, for sale to unorganized retail and procurement from farmers.
- Facilitate the formation of associations and cooperatives of unorganized retailers for procuring directly from suppliers and farmers.
- Encourage farmers to form similar cooperatives to sell to organized retailers.
- Facilitate innovative banking solutions to ensure credit availability to unorganized retailers and farmers from financial institutions.
- Stringent rules to be formed against collusion and predatory pricing and a code of conduct to be drafted for the organized retail sector for dealing with their suppliers

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ANNEXURE-P-6

FACT SHEET ON FOREIGN DIRECT INVESTMENT (FDI)

From APRIL 2000 to FEBRUARY 2015

(up dated up to February, 2015)

I. CUMULATIVE FDI FLOWS INTO INDIA (2000-2015):

A. TOTAL FDI INFLOWS (from April, 2000 to February, 2015):

1.	CUMULATIVE AMOUNT OF FDI INFLOWS (Equity inflows + 'Re-invested earnings' +'Other capital')	-	US$ 364,785 Million
2.	CUMULATIVE AMOUNT OF FDI EQUITY INFLOWS (excluding, amount remitted through RBI's-+NRI Schemes)	Rs. 1,219,783 crore	US$ 246,395 Million

B. FDI INFLOWS DURING FINANCIAL YEAR 2014-15 (from April, 2014 to February, 2015):

1.	TOTAL FDI INFLOWS INTO INDIA (Equity inflows + 'Re-invested earnings' + 'Other capital') (as per RBI's Monthly bulletin dated: 10.04.2015).	-	US$ 41,223 million
2.	FDI EQUITY INFLOWS	Rs. 175,886 crore	US$ 28,813 million

C. FDI EQUITY INFLOWS (MONTH-WISE) DURING THE FINANCIAL YEAR 2014-15:

Financial Year 2014-15 (April-March)		*Amount of FDI Equity inflows*	
		(In Rs. Crore)	*(In US$ mn)*
1.	April, 2014	10,290	1,705
2.	May, 2014	21,373	3,604
3.	June, 2014	11,508	1,927
4.	July, 2014	21,022	3,500
5.	August, 2014	7,783	1,278
6.	September, 2014	16,297	2,678
7.	October, 2014	16,288	2,655
8.	November, 2014	9,486	1,537
9	December, 2014	13,562	2,161
10	January, 2015	27,880	4,481
11	February, 2015	20,397	3,288
2014-15 (from April, 2014 to February, 2015) #		175,886	28,813
2013-14 (from April, 2013 to February, 2014) #		125,960	20,766
%age growth over last year		(+) 40 %	(+) 39 %

D. FDI EQUITY INFLOWS (MONTH-WISE) DURING THE CALENDAR YEAR 2015:

Calendar Year 2015 (Jan.-Dec.)		*Amount of FDI Equity inflows*	
		(In Rs. Crore)	*(In US$ mn)*
1.	January, 2015	27,880	4,481
2.	February, 2015	20,397	3,288
Year 2015 (up February, 2015) #		48,277	7,769
Year 2014 (up February, 2014) #		26,147	4,206
%age growth over last year		(+) 85 %	(+) 85%

Note: *(i) Country & Sector specific analysis is available from the year 2000 onwards, as Company-wise details are provided by RBI from April, 2000 onwards only.*

 # Figures are provisional, subject to reconciliation with RBI, Mumbai.

E. SHARE OF TOP INVESTING COUNTRIES FDI EQUITY INFLOWS *(Financial years)*:

Amount Rupees in crores (US$ in million)

Ranks	Country	2012-13 (April - March)	2013-14 (April – March)	2014-15 (April '14- February, 2015)	Cumulative Inflows (April '00 - February '15)	%age to total Inflows (in terms of US $)
1.	MAURITIUS	51,654 (9,497)	29,360 (4,859)	51,530 (8,447)	422,015 (86,972)	35 %
2.	SINGAPORE	12,594 (2,308)	35,625 (5,985)	39,393 (6,429)	165,200 (31,874)	13 %
3.	U.K.	5,797 (1,080)	20,426 (3,215)	7,463 (1,237)	108,348 (22,001)	9 %
4.	JAPAN	12,243 (2,237)	10,550 (1,718)	10,507 (1,725)	91,151 (17,993)	7 %
5.	NETHERLANDS	10,054 (1,856)	13,920 (2,270)	20,076 (3,294)	76,374 (14,530)	6 %
6.	U.S.A.	3,033 (557)	4,807 (806)	10,360 (1,697)	66,090 (13,625)	6 %
7.	CYPRUS	2,658 (490)	3,401 (557)	3,596 (592)	39,325 (8,038)	3 %
8.	GERMANY	4,684 (860)	6,093 (1,038)	6,485 (1,058)	38,091 (7,577)	3 %
9	FRANCE	3,487 (646)	1,842 (305)	3,626 (594)	22,332 (4,472)	2 %
10.	SWITZERLAND	987 (180)	2,084 (341)	2,040 (333)	15,188 (3,040)	1 %
TOTAL FDI INFLOWS FROM ALL COUNTRIES *		121,907 (22,423)	147,518 (24,299)	175,886 (28,813)	1,220,316 (246,516)	

**Includes inflows under NRI Schemes of RBI.*

Note: (i) Cumulative country-wise FDI equity inflows (from April, 2000 to February, 2015) are at – Annex-'A'.

(ii) %age worked out in US$ terms & FDI inflows received through FIPB/SIA+ RBI's Automatic Route + acquisition of existing shares only.

F. SECTORS ATTRACTING HIGHEST FDI EQUITY INFLOWS:

Amount in Rs. crores (US$ in million)

Ranks	Sector	2012-13 (April - March)	2013-14 (April- March)	2014-15 (April '14- February, 2015)	Cumulative Inflows (April '00 - February '15)	% age to total Inflows (In terms of US$)
1.	SERVICES SECTOR **	26,306 (4,833)	13,294 (2,225)	17,637 (2,881)	203,207 (42,340)	17 %
2.	CONSTRUCTION DEVELOPMENT: TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUCTURE	7,248 (1,332)	7,508 (1,226)	4,559 (754)	113,116 (24,060)	10 %
3.	TELECOMMUNICATIONS (radio paging, cellular mobile, basic telephone services)	1,654 (304)	7,987 (1,307)	17,110 (2,853)	83,829 (17,016)	7 %
4.	COMPUTER SOFTWARE & HARDWARE	2,656 (486)	6,896 (1,126)	12,594 (2,045)	72,265 (14,362)	6 %
5.	DRUGS & PHARMACEUTICALS	6,011 (1,123)	7,191 (1,279)	7,840 (1,304)	63 911 (12,901)	5 %
6.	AUTOMOBILE INDUSTRY	8,384 (1,537)	9,027 (1,517)	14,855 (2,420)	63 051 (12,232)	5 %
7.	CHEMICALS (OTHER THAN FERTILIZERS)	1,596 (292)	4,738 (878)	3,614 (595)	48,848 (10,263)	4 %
8.	POWER	2,923 (536)	6,519 (1,066)	3,932 (649)	46,587 (9,549)	4 %
9.	METALLURGICAL INDUSTRIES	7,878 (1,466)	3,436 (568)	2,776 (453)	41,026 (8,527)	4 %
10	TRADING	3,901 (718)	8,191 (1,343)	16,239 (2,646)	43,077 (7,945)	3 %

*Note: (i)** Services sector includes Financial, Banking, Insurance, Non-Financial / Business, Outsourcing, R&D, Courier, Tech. Testing and Analysis*

(ii) Cumulative Sector- wise FDI equity inflows (from April, 2000 to February, 2015) are at - Annex-'B'.

(iii) FDI Sectoral data has been revalidated / reconciled in line with the RBI, which reflects minor changes in the FDI figures (increase/decrease) as compared to the earlier published sectoral data.

G. STATEMENT ON RBI'S REGIONAL OFFICES (WITH STATE COVERED) RECEIVED FDI EQUITY INFLOWS[1] *(from April, 2000 to February, 2015)*:

Amount Rupees in crores (US$ in million)

S. No.	RBI's - Regional Office[2]	State covered	2012-13 (April - March)	2013-14 (April - March)	2014-15 (April '14- February, 2015)	Cumulative Inflows (April '00 - February ,15)	%age to total Inflows (in terms of US$)
1	MUMBAI	MAHARASHTRA, DADRA & NAGAR HAVELI, DAMAN & DIU	47,359 (8,716)	20,595 (3,420)	34,914 (5,718)	349,002 (72,474)	29
2	NEW DELHI	DELHI, PART OF UP AND HARYANA	17,490 (3,222)	38,190 (6,242)	39,115 (6,373)	245,886 (48,908)	20
3	CHENNAI	TAMIL NADU, PONDICHERRY	15,252 (2,807)	12,595 (2,116)	21,656 (3,545)	87,062 (16,742)	7
4	BANGALORE	KARNATAKA	5,553 (1,023)	11,422 (1,892)	19,514 (3,165)	80,381 (15,841)	6
5	AHMEDABAD	GUJARAT	2,676 (493)	5,282 (860)	8,838 (1,439)	53,220 (10,949)	4
6	HYDERABAD	ANDHRA PRADESH	6,290 (1,159)	4,024 (678)	8,047 (1,324)	48,961 (9,970)	4
7	KOLKATA	WEST BENGAL, SIKKIM, ANDAMAN & NICOBAR ISLANDS	2,319 (424)	2,659 (436)	1,335 (218)	14,499 (2,960)	1
8	CHANDIGARH	CHANDIGARH, PUNJAB, HARYANA, HIMACHAL PRADESH	255 (47)	562 (91)	234 (39)	6,360 (1,331)	0.5
9	JAIPUR	RAJASTHAN	714 (132)	233 (38)	3,233 (540)	6,791 (1,264)	0.5
10.	BHOPAL	MADHYA PRADESH, CHATTISGARH	1,208 (220)	708 (119)	600 (100)	6,095 (1,216)	0.5
11	KOCHI	KERALA, LAKSHADWEEP	390 (72)	411 (70)	1,367 (222)	6,039 (1,203)	0.5
12	PANAJI	GOA	47 (9)	103 (17)	208 (34)	3,864 (822)	0.3
13	KANPUR	UTTAR PRADESH, UTTRANCHAL	167 (31)	150 (25)	597 (97)	2,362 (469)	0.2
14	BHUBANESHWAR	ORISSA	285 (52)	288 (48)	52 (9)	1,957 (397)	0.2
15	GUWAHATI	ASSAM, ARUNACHAL PRADESH, MANIPUR, MEGHALAYA, MIZORAM, NAGALAND, TRIPURA	27 (5)	4 (0.6)	12 (2)	364 (81)	0
16	PATNA	BIHAR, JHARKHAND	41 (8)	9 (1)	66 (11)	265 (50)	0
17	JAMMU	JAMMU & KASHMIR	0 (0)	1 (0.2)	25 (4)	26 (4)	0
18	REGION NOT INDICATED[3]		21,833 (4,004)	50,283 (8,245)	36,073 (5,975)	306,589 (61,715)	25.1
SUB. TOTAL			121,907 (22,424)	147,518 (24,299)	175,886 (28,813)	1,219,783 (246,395)	100.00
19	RBI'S-NRI SCHEMES *(from 2000 to 2002)*		0	0	0	533 (121)	-
GRAND TOTAL			121,907 (22,424)	147,518 (24,299)	175,886 (28,813)	1,220,316 (246,516)	-

[1] *Includes 'equity capital components' only.*
[2] *The Region-wise FDI inflows are classified as per RBI's – Regional Office received FDI inflows, furnished by RBI, Mumbai.*
[3] *Represents, FDI inflows through acquisition of existing shares by transfer from residents to non residents. For this, RBI Regional wise information is not provided by Reserve Bank of India.*

II. FINANCIAL YEAR-WISE FDI INFLOWS DATA:

A. AS PER INTERNATIONAL BEST PRACTICES:

(Data on FDI have been revised since 2000-01 with expended coverage to approach International Best Practices)

(Amount US$ million)

S. No.	*Financial Year (April-March)*	*FOREIGN DIRECT INVESTMENT (FDI)*						*Investment by FII's Foreign Institutional Investors Fund (net)*
		Equity		*Re-invested earnings +*	*Other capital +*	*FDI FLOWS INTO INDIA*		
		FIPB Route/ RBI's Automatic Route/ Acquisition Route	*Equity capital of unincorporated bodies #*			*Total FDI Flows*	*%age growth over previous year (in US$ terms)*	
FINANCIAL YEARS 2000-01 to 2014-15 (up to February,, 2015)								
1.	2000-01	2,339	61	1,350	279	4,029	-	1,847
2.	2001-02	3,904	191	1,645	390	6,130	(+) 52 %	1,505
3.	2002-03	2,574	190	1,833	438	5,035	(-) 18 %	377
4.	2003-04	2,197	32	1,460	633	4,322	(-) 14 %	10,918
5.	2004-05	3,250	528	1,904	369	6,051	(+) 40 %	8,686
6.	2005-06	5,540	435	2,760	226	8,961	(+) 48 %	9,926
7.	2006-07	15,585	896	5,828	517	22,826	(+) 146 %	3,225
8.	2007-08	24,573	2,291	7,679	300	34,843	(+) 53 %	20,328
9.	2008-09	31,364	702	9,030	777	41,873	(+) 20 %	(-) 15,017
10.	2009-10 (P)	25,606	1,540	8,668	1,931	37,745	(-) 10 %	29,048
11.	2010-11 (P)	21,376	874	11,939	658	34,847	(-) 08 %	29,422
12.	2011-12 (P)	34,833	1,022	8,206	2,495	46,556	(+) 34 %	16,812
13.	2012-13 (P)	21,825	1,059	9,880	1,534	34,298	(-) 26%	27,582
14	2013-14 (P)	24,299	975	8,978	1,794	36,046	(+) 5%	5,010
15.	2014-15 (Apr – Feb, 2015)	28,815	863	8,164	3,381	41,223	-	-
CUMULATIVE TOTAL (from April, 2000 to February, 2015)		248,080	11,659	89,324	15,722	364,785	-	149,663

Source: (i) *RBI's Bulletin April, 2015 dt.10.04.2015 (Table No. 34 – FOREIGN INVESTMENT INFLOWS).*

(ii) Inflows under the acquisition of shares in March, 2011, August, 2011 & October, 2011, include net FDI on account of transfer of participating interest from Reliance Industries Ltd. to BP Exploration (Alpha).

(iii) RBI had included Swap of Shares of US$ 3.1 billion under equity components during December 2006.

(iv) Monthly data on components of FDI as per expended coverage are not available. These data, therefore, are not comparable with FDI data for previous years.

(v) Figures updated by RBI up to February, 2015.

(vi) Data in respect of 'Re-invested earnings' & 'Other capital' are estimated as average of previous two years.

'#' Figures for equity capital of unincorporated bodies for 2010-11 are estimates. (P) All figures are provisional

B. DIPP'S – FINANCIAL YEAR-WISE FDI EQUITY INFLOWS:

(As per DIPP's FDI data base – equity capital components only):

S. Nos	*Financial Year (April – March)*	*Amount of FDI Inflows*		*%age growth over previous year (in terms of US $)*
FINANCIAL YEARS 2000-01 to 2014-15 (up to February, 2015)		*In Rs crores*	*In US$ million*	
1.	2000-01	10,733	2,463	-
2.	2001-02	18,654	4,065	(+) 65 %
3.	2002-03	12,871	2,705	(-) 33 %
4.	2003-04	10,064	2,188	(-) 19 %
5.	2004-05	14,653	3,219	(+) 47 %
6.	2005-06	24,584	5,540	(+) 72 %
7.	2006-07	56,390	12,492	(+)125 %
8.	2007-08	98,642	24,575	(+) 97 %
9.	2008-09	142,829	31,396	(+) 28 %
10.	2009-10 #	123,120	25,834	(-) 18 %
11.	2010-11 #	97,320	21,383	(-) 17 %
12.	2011-12 # ^	165,146	35,121	(+) 64 %
13.	2012-13 #	121,907	22,423	(-) 36 %
14.	2013-14 #	147,518	24,299	(+) 8%
15.	2014-15 (Apr – Feb., 2015) #	175,886	28,813	-
CUMULATIVE TOTAL (from April, 2000 to February, 2015)		1,220,316	246,516	-

Note: *(i) including amount remitted through RBI's-NRI Schemes (2000-2002).*

(ii) FEDAI (Foreign Exchange Dealers Association of India) conversion rate from rupees to US dollar applied, on the basis of monthly average rate provided by RBI (DEPR), Mumbai.

 # Figures for the years 2009-10 to 2014-15 (from April to February, 2015) are provisional subject to reconciliation with RBI.

^ Inflows for the month of March, 2012 are as reported by RBI, consequent to the adjustment made in the figures of March, '11, August, '11 and October, '11.

Annex-A

STATEMENT ON COUNTRY-WISE FDI EQUITY INFLOWS FROM APRIL, 2000 TO FEBRUARY, 2015

S.No	Name of the Country	Amount of Foreign Direct Investment Inflows		%age with Inflows
		(In Rs crore)	(In US$ million)	
1	Mauritius	422,015.00	86,971.78	35.30
2	Singapore	165,199.78	31,874.31	12.94
3	United Kingdom	108,347.75	22,001.08	8.93
4	Japan	91,150.84	17,992.79	7.30
5	Netherlands	76,374.25	14,529.60	5.90
6	U.S.A	66,090.49	13,624.67	5.53
7	Cyprus	39,325.17	8,037.91	3.26
8	Germany	38,090.67	7,576.53	3.07
9	France	22,332.27	4,472.08	1.82
10	Switzerland	15,188.37	3,040.37	1.23
11	UAE	15,040.73	3,032.10	1.23
12	Spain	10,493.95	2,045.92	0.83
13	Italy	7,737.02	1,577.98	0.64
14	South Korea	7,710.45	1,541.60	0.63
15	HongKong	7,823.32	1,534.23	0.62
16	Luxembourg	6,723.52	1,207.56	0.49
17	Sweden	5,242.17	1,088.04	0.44
18	Caymen Islands	4,711.45	1,033.80	0.42
19	Russia	5,483.18	1,007.94	0.41
20	China	5,203.97	887.80	0.36
21	British Virginia	3,855.85	836.94	0.34
22	Belgium	4,178.76	802.44	0.33
23	Malaysia	3,822.84	732.77	0.30
24	Australia	3,173.82	649.75	0.26
25	Indonesia	2,898.41	622.51	0.25
26	Poland	3,300.34	619.52	0.25
27	Canada	2,540.17	522.21	0.21
28	The Bermudas	2,252.20	502.07	0.20
29	Denmark	1,978.78	400.31	0.16
30	Oman	1,727.56	369.12	0.15
31	Ireland	1,744.25	330.00	0.13
32	Finland	1,608.04	323.57	0.13
33	South Africa	1,534.88	289.62	0.12
34	Austria	1,244.41	245.10	0.10
35	Thailand	1,065.97	201.04	0.08
36	Seychelles	1,092.15	181.26	0.07
37	Norway	881.62	171.67	0.07
38	Chile	710.49	150.23	0.06
39	Morocco	651.82	137.35	0.06
40	Philippines	725.85	122.82	0.05
41	British Isles	463.88	100.65	0.04
42	Turkey	503.12	97.40	0.04
43	Taiwan	447.79	89.44	0.04
44	Israel	414.10	82.04	0.03
45	Mexico	438.74	80.07	0.03
46	West Indies	348.17	78.28	0.03
47	Saudi Arabia	270.43	53.37	0.02
48	St. Vincent	262.08	50.97	0.02
49	Virgin Islands(US)	278.61	50.73	0.02

S.No	Name of the Country	Amount of Foreign Direct Investment Inflows		%age with Inflows
		(In Rs crore)	(In US$ million)	
50	Baharain	251.65	49.12	0.02
51	NewZealand	234.98	47.06	0.02
52	Panama	202.19	43.34	0.02
53	Bahamas	188.33	38.34	0.02
54	Korea(North)	187.88	37.36	0.02
55	Sri Lanka	171.23	34.31	0.01
56	Saint Kilts & Nevis	147.88	33.53	0.01
57	Channel Islands	172.43	31.78	0.01
58	Portugal	158.89	31.54	0.01
59	Jordan	158.48	29.12	0.01
60	Kuwait	136.82	26.87	0.01
61	Kazakhstan	134.16	26.11	0.01
62	Brazil	113.96	23.37	0.01
63	Kenya	102.49	21.74	0.01
64	Iceland	93.72	21.14	0.01
65	Gibraltar	85.14	19.75	0.01
66	Czech Republic	85.60	19.12	0.01
67	Hungary	89.47	17.02	0.01
68	Isle of Man	82.11	15.56	0.01
69	Malta	69.10	14.65	0.01
70	Liberia	64.54	14.56	0.01
71	Nigeria	65.64	13.10	0.01
72	Scotland	73.08	12.80	0.01
73	Belarus	50.52	12.27	0.00
74	Argentina	46.35	10.17	0.00
75	Liechtenstein	47.68	9.49	0.00
76	Myanmar	35.75	8.93	0.00
77	Slovenia	40.58	8.49	0.00
78	SAMOA ISLANDS	41.46	6.63	0.00
79	Greece	35.28	6.39	0.00
80	Ghana	32.27	6.36	0.00
81	Romania	33.19	6.26	0.00
82	Maldives	26.81	5.83	0.00
83	Belize	25.40	5.56	0.00
84	Slovakia	23.15	5.30	0.00
85	Qatar	28.31	5.13	0.00
86	Rep. of Fiji Islands	22.30	5.07	0.00
87	Uruguay	21.38	4.49	0.00
88	Tunisia	19.84	4.31	0.00
89	Guersney	23.84	4.30	0.00
90	Ukraine	20.65	3.62	0.00
91	Egypt	17.59	3.26	0.00
92	Bermuda	17.22	2.80	0.00
93	West Africa	12.31	2.47	0.00
94	Trinidad & Tobago	12.73	2.34	0.00
95	Colombia	11.56	2.16	0.00
96	Nepal	9.70	2.03	0.00
97	Yemen	7.74	1.87	0.00
98	Lebanon	9.70	1.67	0.00
99	Tanzania	7.65	1.63	0.00
100	Monaco	7.49	1.52	0.00
101	SAN MARINO	9.41	1.52	0.00
102	Bulgaria	7.26	1.26	0.00
103	Uganda	5.07	1.10	0.00

S.No	Name of the Country	Amount of Foreign Direct Investment Inflows		%age with Inflows
		(In Rs crore)	(In US$ million)	
104	Cuba	4.73	1.04	0.00
105	Guyana	4.60	1.00	0.00
106	Vanuatu	4.41	0.94	0.00
107	Togolese Republic	4.46	0.33	0.00
108	Iran	3.30	0.57	0.00
109	Congo (DR)	2.41	0.54	0.00
110	Croatia	2.29	0.52	0.00
111	Jamaica	2.70	0.50	0.00
112	Estonia	2.43	0.48	0.00
113	Aruba	1.96	0.43	0.00
114	Vietnam	1.63	0.32	0.00
115	TAJIKISTAN	1.81	0.29	0.00
116	Anguilla	1.47	0.29	0.00
117	Yugoslavia	1.13	0.24	0.00
118	Iraq	1.02	0.22	0.00
119	Zambia	0.83	0.17	0.00
120	Peru	0.78	0.14	0.00
121	Latvia	0.52	0.10	0.00
122	SURINAME	0.54	0.09	0.00
123	Libya	0.28	0.07	0.00
124	Mongolia	0.27	0.06	0.00
125	Sudan	0.24	0.05	0.00
126	Costa Rica	0.23	0.04	0.00
127	Bangladesh	0.16	0.03	0.00
128	Afghanistan	0.12	0.03	0.00
129	Botswana	0.13	0.02	0.00
130	St. Lucia	0.06	0.01	0.00
131	Muscat	0.06	0.01	0.00
132	Venezuela	0.03	0.01	0.00
133	Georgia	0.02	0.00	0.00
134	East Africa	0.02	0.00	0.00
135	Cameroon	0.01	0.00	0.00
136	Bolivia	0.01	0.00	0.00
137	Kyrgyzstan	0.01	0.00	0.00
138	Barbados	0.01	0.00	0.00
139	Djibouti	0.00	0.00	0.00
140	Paraguay	0.00	0.00	0.00
141	MOZAMBIQUE	0.00	0.00	0.00
142	SENEGAL	0.00	0.00	0.00
143	FII's	0.25	0.06	0.00
144	NRI **	20,383.66	4,684.25	1.90
145	Country Details Awaited	30,875.37	6,964.32	2.83
	SubTotal	1,219,783.40	246,394.72	100
146	RBI'S-NRI SCHEMES (2000-2002)	533.06	121.33	
	Grand Total	1,220,316.46	246,516.05	

*'**'Complete/separate data on NRI investment is not maintained by RBI. However, the above FDI inflows data on NRI investment, includes investment by NRI's, who have disclosed their status as NRI's, at the time of making their investment.*

'+' Percentage of inflows worked out in terms of US$ & the above amount of inflows received through FIPB/SIA route, RBI's automatic route & acquisition of existing shares only.

Annex-E

STATEMENT ON SECTOR-WISE FDI EQUITY INFLOWS FROM APRIL, 2000 TO FEBRUARY, 2015

S.No	Sector	Amount of FDI Inflows		%age of Total Inflows
		(In Rs crore)	(In US$ million)	
1	SERVICES SECTOR*	203,207.12	42,340.36	17.18
2	CONSTRUCTION DEVELOPMENT: Townships, housing, built-up infrastructure and construction-development projects	113,115.96	24,060.36	9.76
3	TELECOMMUNICATIONS	83,829.32	17,015.99	6.91
4	COMPUTER SOFTWARE & HARDWARE	72,264.91	14,862.02	6.03
5	DRUGS & PHARMACEUTICALS	63,910.56	12,901.33	5.24
6	AUTOMOBILE INDUSTRY	63,051.15	12,232.06	4.96
7	CHEMICALS (OTHER THAN FERTILIZERS)	48,847.60	10,262.87	4.17
8	POWER	46,587.17	9,548.82	3.88
9	METALLURGICAL INDUSTRIES	41,025.74	8,527.34	3.46
10	TRADING	43,076.80	7,944.67	3.22
11	HOTEL & TOURISM	40,744.64	7,862.08	3.19
12	PETROLEUM & NATURAL GAS	31,651.33	6,519.70	2.65
13	FOOD PROCESSING INDUSTRIES	36,632.82	6,259.42	2.54
14	MISCELLANEOUS MECHANICAL & ENGINEERING INDUSTRIES	20,612.79	3,954.67	1.61
15	INFORMATION & BROADCASTING (INCLUDING PRINT MEDIA)	19,197.30	3,897.50	1.58
16	ELECTRICAL EQUIPMENTS	18,705.40	3,851.83	1.56
17	NON-CONVENTIONAL ENERGY	18,898.83	3,582.16	1.45
18	INDUSTRIAL MACHINERY	18,753.01	3,569.30	1.45
19	CONSTRUCTION (INFRASTRUCTURE) ACTIVITIES	16,924.88	3,264.96	1.33
20	CEMENT AND GYPSUM PRODUCTS	14,629.79	3,086.32	1.25
21	HOSPITAL & DIAGNOSTIC CENTRES	15,424.26	2,932.17	1.19
22	CONSULTANCY SERVICES	13,982.21	2,798.45	1.14
23	FERMENTATION INDUSTRIES	11,657.67	2,187.33	0.89
24	RUBBER GOODS	9,642.98	1,754.55	0.71
25	AGRICULTURE SERVICES	8,636.38	1,745.83	0.71
26	MINING	8,466.79	1,669.49	0.68
27	PORTS	6,730.91	1,637.30	0.66
28	TEXTILES (INCLUDING DYED,PRINTED)	7,786.84	1,568.01	0.64
29	SEA TRANSPORT	7,449.32	1,514.40	0.61
30	ELECTRONICS	6,795.56	1,424.32	0.58
31	PRIME MOVER (OTHER THAN ELECTRICAL GENERATORS)	6,310.04	1,202.57	0.49
32	EDUCATION	5,717.84	1,082.47	0.44
33	MEDICAL AND SURGICAL APPLIANCES	4,846.02	925.45	0.38
34	PAPER AND PULP (INCLUDING PAPER PRODUCTS)	4,328.54	910.49	0.37
35	SOAPS, COSMETICS & TOILET PREPARATIONS	4,713.62	894.45	0.36
36	MACHINE TOOLS	3,539.68	716.03	0.29
37	CERAMICS	3,330.05	700.89	0.28
38	DIAMOND,GOLD ORNAMENTS	3,609.81	682.79	0.28
39	RAILWAY RELATED COMPONENTS	3,426.40	634.27	0.26
40	AIR TRANSPORT (INCLUDING AIR FREIGHT)	2,762.57	569.44	0.23
41	VEGETABLE OILS AND VANASPATI	2,896.93	547.42	0.22
42	FERTILIZERS	2,915.62	543.14	0.22

S.No	Sector	Amount of FD Inflows		%age of Total Inflows
		(In Rs crore)	(In US$ million)	
43	GLASS	2,374.79	461.19	0.19
44	PRINTING OF BOOKS (INCLUDING LITHO PRINTING INDUSTRY)	2,335.22	447.49	0.18
45	AGRICULTURAL MACHINERY	2,127.62	413.93	0.17
46	COMMERCIAL, OFFICE & HOUSEHOLD EQUIPMENTS	1,516.81	309.34	0.13
47	RETAIL TRADING (SINGLE BRAND)	1,549.92	275.38	0.11
48	EARTH-MOVING MACHINERY	1,139.07	234.85	0.10
49	SCIENTIFIC INSTRUMENTS	960.98	171.98	0.07
50	LEATHER,LEATHER GOODS AND PICKERS	785.16	150.06	0.06
51	TEA AND COFFEE (PROCESSING & WAREHOUSING COFFEE & RUBBER)	498.33	108.50	0.04
52	TIMBER PRODUCTS	537.09	101.93	0.04
53	SUGAR	425.65	81.29	0.03
54	DYE-STUFFS	417.28	74.38	0.03
55	PHOTOGRAPHIC RAW FILM AND PAPER	273.76	67.29	0.03
56	INDUSTRIAL INSTRUMENTS	310.86	67.11	0.03
57	BOILERS AND STEAM GENERATING PLANTS	314.80	63.33	0.03
58	GLUE AND GELATIN	211.68	37.86	0.02
59	COAL PRODUCTION	119.19	27.73	0.01
60	MATHEMATICAL,SURVEYING AND DRAWING INSTRUMENTS	39.80	7.98	0.00
61	DEFENCE INDUSTRIES	24.84	5.02	0.00
62	COIR	22.05	4.07	0.00
63	MISCELLANEOUS INDUSTRIES	43,161.39	9,098.98	3.69
SubTotal		1,219,783.40	246,394.72	100
64	RbI's- NRI Schemes (2000-2002)	533.06	121.33	
Grand Total		1,220,316.46	246,516.05	

** Services sector includes Financial, Banking, Insurance, Non-Financial / Business, Outsourcing, R&D, Courier, Tech. Testing Analysis*
FDI inflows data re-classified, as per segregation of data from April 2000 onwards.
'+' Percentage of inflows worked out in terms of US$ & the above amount of inflows received through FIPB/SIA route RBI's automatic route & acquisition of existing shares only.

- *FDI Sectoral data has been revalidated / reconciled in line with the RBI, which reflects minor changes in the FDI figures (increase/decrease) as compared to the earlier published sectoral data.*

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ANNEXURE - P-7

WORLD TRADE ORGANIZATION

WT/COMTD/W/193
14 February 2013

(13-0844)

Committee on Trade and Development

368

ELECTRONIC COMMERCE, DEVELOPMENT
AND SMALL, MEDIUM-SIZED ENTERPRISES

Background Note by the Secretariat[1]

[1] This document has been prepared under the responsibility of the WTO Secretariat and is without prejudice to the positions of Members and to their rights and obligations under the WTO.

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The number of mobile phones in use worldwide between 2000 and 2012 grew from less than 1 to more than 6 billion. The mobile revolution is transforming livelihoods, helping to create new businesses, and changing the way we communicate, work and earn and spend income. The mobile phone network is already "the biggest machine" the world has ever seen, and now that machine is being used to deliver development opportunities on a scale never before imagined. During this second decade of the new millennium, maximizing the potential of mobile phones is a challenge that will engage governments, the private sector, and the development community alike.

Source: World Bank, Information and Communications for Development 2012: Maximizing Mobile

I. INTRODUCTION

1. This background paper was prepared in response to a request for a workshop on Electronic Commerce, Development and SMEs made at the WTO's Committee for Trade and Development (CTD) in July 2012 (see Annex 1). The paper focuses on the relationship between electronic-commerce (e-commerce), development and small and medium-sized enterprises (SMEs) and on how some of the latter have used e-commerce to promote, market, service and sell their products nationally and internationally. Various types of e-commerce are discussed such as business-to-business, business-to-consumer and business-to-government. And the vast potential of mobile commerce is described given the key role it plays in developing and least-developed countries (LDCs). This paper by no means pretends to be an

exhaustive study of the subject under discussion but does attempt to provide an overview of both the opportunities and challenges facing SMEs in least-developed and developing countries.

2. A key focus of the paper is on why some small and medium-sized enterprises have used the internet and realized significant increases in their exports and business activities overall, whereas others are barely making use of the huge potential offered by the internet and its various applications. Development-related issues are discussed such as how low levels of investment, inadequate infrastructure or a lack of appropriate legislation can negatively affect e-commerce or stifle its potential. The need to overcome infrastructural bottlenecks in telecommunications, transport, electricity grids and logistics are addressed alongside policy issues such as consumer protection, security of transactions, privacy of records, and intellectual property. The paper has a strong focus on mobile telephony and mobile-commerce (m-commerce) in general because of the key role both play in many low-income developing countries and because of the vast potential such technologies have for improving trade and business opportunities.

II. THE GROWTH OF THE INTERNET

3. The first decade of the new millennium has witnessed a profound change and dramatic increase in the way business and trade takes place electronically. Each day more users in least- developed and developing countries are accessing the internet through terminals. A growing percentage of users are now also accessing the web through mobile technology. Predictions call for the internet and especially the use of mobile applications to expand exponentially in the decades ahead. There is enormous potential for using information and communication technologies (ICTs) to contribute to the social and economic progress of developing countries worldwide. A key role in this regard is played by small and medium-sized businesses.

4. UNCTAD's recent *Information Economy Report 2010* shows how ICT use by micro- and small and medium-sized enterprises (SMEs) has improved not only business performance but has helped improve livelihoods in some of the world's poorest regions and communities. Many entrepreneurs in developing countries now have a real possibility to benefit from ICTs in their business activities. In many cases, this has resulted in gains in enhanced productivity. By improving communication channels, both domestically and internationally, the application of relevant ICTs can greatly enhance the competitiveness of business. Government efforts to further improve, upgrade and expand ICT use by the private sector should, therefore, be reinforced. UNCTAD's study finds that governments and their various partners, including the private sector, are far from taking full advantage of the opportunities that are emerging in the new ICT landscape. This is evident in part from the relatively limited attention that has been given to ICTs in strategies aimed at promoting private sector development (PSD).[2]

5. The rapid technological advances in ICT and the steady increase in the number of users are changing the global economic landscape. From 1990 to early 2000, the estimated number of internet users grew more than tenfold to roughly 300 million. This had a direct effect on the way in which people communicate and do business.[3] Today, however, these 300 million users represent barely two-thirds of the size of the subscribers active on "Facebook" alone. Today, there are more than five times as many internet users as there were in 2000. Growing from two billion at the start of this decade, there were an estimated 2.25 billion users in 2011. Chart 1 describes the increase in internet users over the past ten years.

Chart 1: Global numbers of individuals using the internet, 2001-2011

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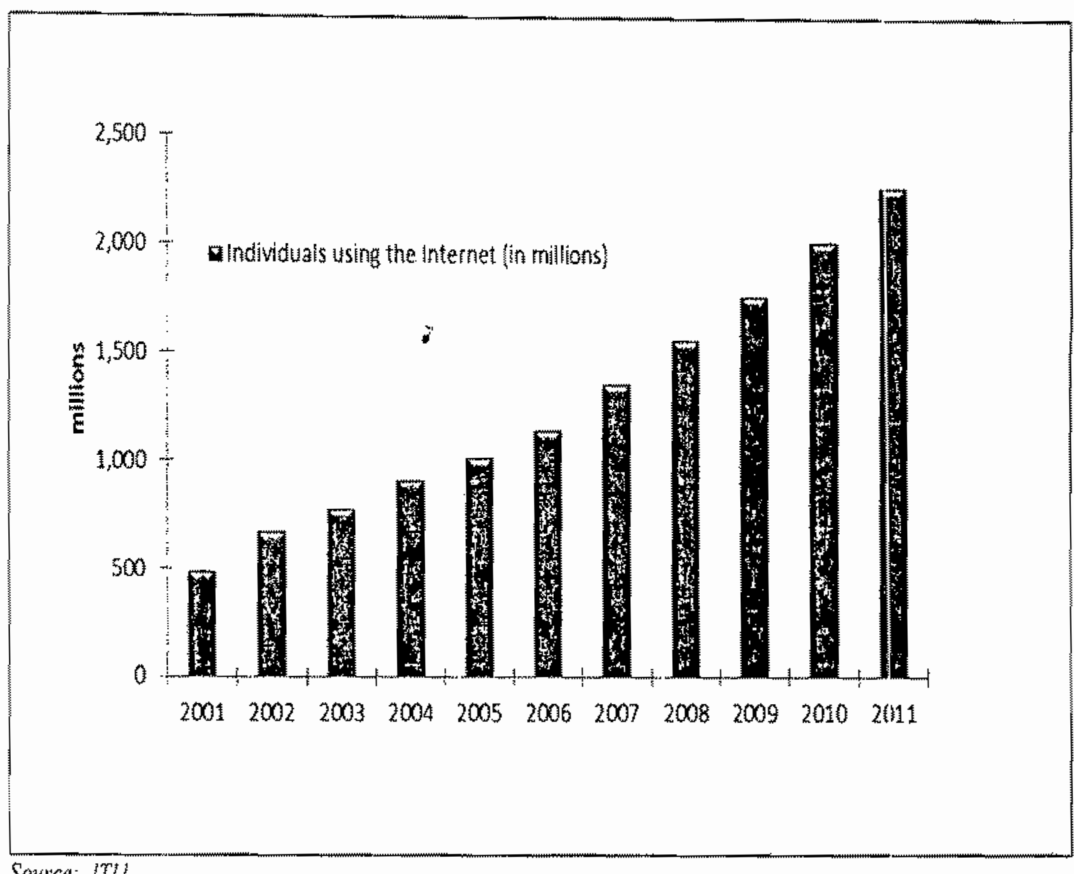
[2] UNCTAD's *Information Economy Report 2010.*

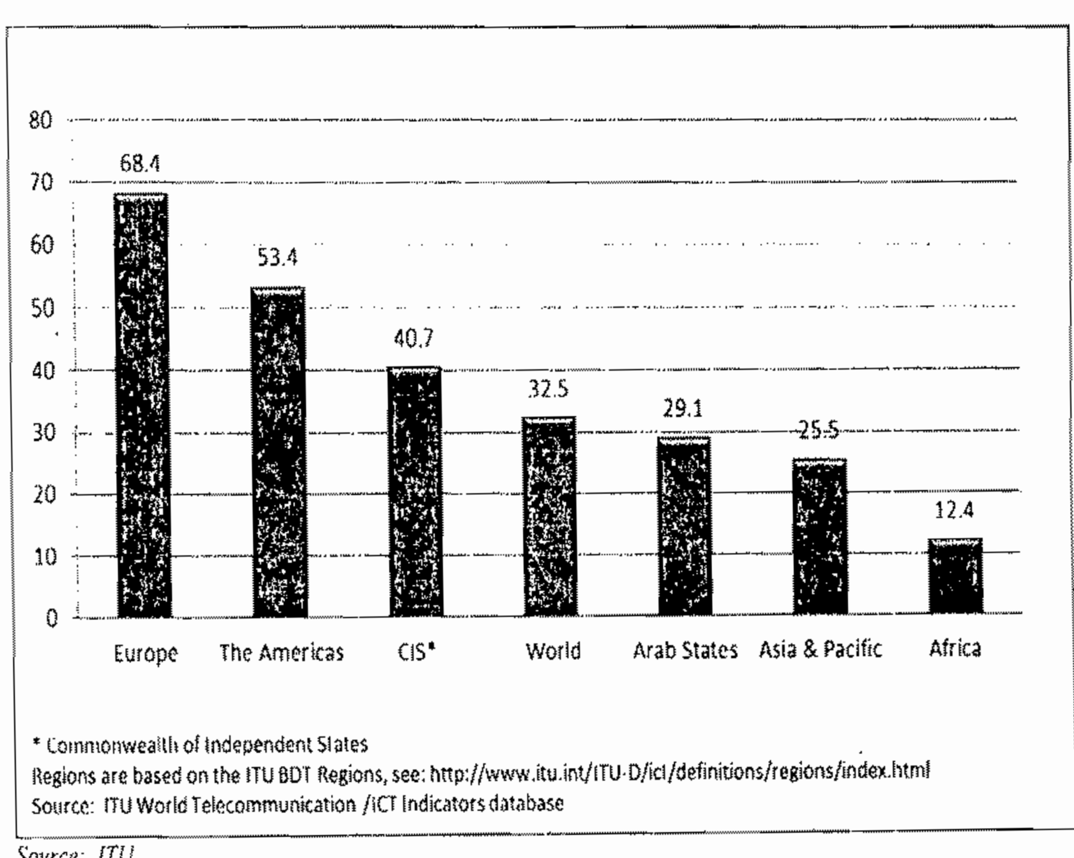
[3] Goldstein, Andrea and O'Connor, David. "E-Commerce for Development: Prospects and Policy Issues." Organization for Economic Cooperation and Development, September 2000. Available at: http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan004061.pdf



Source: ITU

6. Of all the internet users in 2011, 1.3 billion were from the Asia-Pacific region, the Middle East, Africa or Latin and South America indicating a shift in the regions with the most people on line.[4] However, in spite of this growing trend in internet use, developed countries still continue to surpass developing countries in terms of number of connections.[5] Chart 2 highlights the number of individuals using the internet per 100 inhabitants. While the Africa region has a penetration rate of 12.4, Europe has the highest penetration rate with 68.4 out of every 100 Europeans having access.

Chart 2: Individuals using the internet per 100 inhabitants - 2011



Source: ITU

III. THE DIGITAL DIVIDE: STILL A REALITY?

7. The term "digital divide" is commonly used to explain the gap between individuals, households, businesses and geographic areas at different socio-economic levels regarding opportunities to access

[4] http://www.pwc.com/gx/en/technology/publications/assets/the-new-digital-economy.pdf
[5] http://www.bbc.com/news/technology-11576486

information and communication technologies as well as the use of the internet for a wide variety of activities. The "digital divide" is used to denote differences both among and within countries.[6] Since 2000, the phrase "digital divide" has come to symbolize the gap in ICT capabilities between developed and developing countries. However, civil society organizations such as the World Wide Web Foundation believe that the digital divide is more a symptom of other, more fundamental problems in a given country. These can include an education divide, a health divide and a governance divide. It is not always the cause of a lower level of development.[7] Many examples have shown that narrowing the "digital divide" can assist in narrowing differences in other areas of developmental concern. The importance of prioritising the development of e-commerce lies in the fact that as the pace and scope of the technological revolution increases and expands, so does the potential digital divide. Governments can help to ensure, by a mix of investment incentives, competition policy and social policy, that users benefit not only from being connected to the internet but also from any technological evolutions which can increase the speed of data flows and reduce costs.

8. The internet plays a large role in e-commerce and has continued growing worldwide in terms of users and penetration. Although developed economies still accounted for the majority of internet users in 2006 and are still very much ahead in terms of internet penetration, developing economies have been catching up quickly. The number of users in developing countries actually surpassed that of developed countries sometime in 2010.[8] Technological progress has indeed been thriving in both developing and developed countries and this trend is expected to continue as the sector attracts more research funds and investment.

Chart 3: Individuals using the internet by level of development

2006
Developing
44%

2011
Developing
62%

Source: ITU

IV. THE GROWTH OF E-COMMERCE

9. There is no question that e-commerce has grown rapidly since the first users started to browse the worldwide web in search of goods and services. Today, sales realized over the internet represent a significant proportion of overall commercial sales. In 1991, the internet had less than three million users around the world and its application to e-commerce was non-existent. Almost a decade later, by 1999, an estimated 300 million users accessed the internet and approximately one quarter of them made purchases online from electronic commerce sites, worth approximately US$110 billion.[9] This year global, business-to-consumer e-commerce sales are set to pass the US$1.25 trillion mark.[10]

1. What is e-commerce?

10. For purposes of the trade focus of this paper, e-commerce is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. Even though goods or services are ordered electronically, the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations. Included in these electronic transactions are orders made over the web, extranet or

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[6] Understanding the Digital Divide. http://www.oecd.org/internet/interneteconomy/1888451.pdf
[7] George Sadowsky, ed. "Accelerating Development. Using the Web: Empowering Poor and Marginalized Populations." World Wide Web Foundation.
[8] ITU.
[9] http://www.oecd.org/eco/economicoutlookanalysisandforecasts/2087433.pdf
[10] http://www.internetretailer.com/2012/06/14/global-e-commerce-sales-will-top-125-trillion-2013

electronic data interchange. The type of transaction made is defined by the method of placing the order. Normally excluded are orders made by telephone calls, facsimile or manually typed e-mails.[11]

11. The United States (US) remains the world's biggest e-commerce market, followed by the United Kingdom and Japan. It is estimated that the growth rates for electronic transactions carried out over the net will be approximately ten to 15% in the coming years. China, however, saw e-commerce sales grow by more than 130% in 2011 and it is likely to be only a short matter of time before it becomes the world's single largest e-commerce market.[12]

Chart 4: Mobile-cellular subscriptions by level of development

2000	2005	2011

Source: *ITU*

V. B2B, B2C OR B2G?

12. There are numerous types of commercial transactions that occur on line, from buying goods such as books or clothes to purchasing services such as airline tickets or making hotel or car rental reservations. Since the main focus of this paper is on how SMEs use the internet, the discussion here will concern only a few services which relate closely to SME economic activity. These include: electronic communications in the area of Business-to-Business (B2B), Business-to-Consumer (B2C), Business-to-Government (B2G) and mobile e-commerce.

1. Business-to-Business (B2B)

13. B2B is e-commerce between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. This is the exchange of products, services, or information between businesses rather than between businesses and consumers.[13] Global B2B transactions comprise 90% of all e-commerce. According to research conducted by the US-based International Data Corporation (IDC), it is estimated that global B2B e-commerce, especially among wholesalers and distributors, amounted to US$12.4 trillion at the end of 2012. If the expansion in e-commerce continues at this rapid pace in developed markets as is expected, then B2B and B2C e-commerce transactions will account for about 5% of all inter-company transactions and retail sales by 2017.[14]

2. Business-to-Consumer (B2C)

14. Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions. According to the IDC, global B2C transactions are estimated to reach US$1.2 trillion at the end of 2012, ten times less than B2B transactions. B2C e-commerce entails businesses selling to the general public typically through catalogues that make use of shopping cart software. Although B2C e-commerce only accounts for only a small share of e-commerce as a whole, it continues to grow. B2C e-commerce is highest in Norway, Denmark, Sweden, the United Kingdom and the US and covers mainly computer-related products, clothing and digitized products. Despite the low value of its transactions, B2C

[11] "http://www.oecd-ilibrary.org/sites/sti_scoreboard-2011-en/06/10/index.html;jsessionid=v04de9q27yt1.delta?contentType=&itemId=/content/chapter/sti_scoreboard-2011-64-en&containerItemId=/content/serial/20725345&accessItemIds=/content/book/sti_scoreboard-2011-en&mimeType=text/html"

[12] http://www.internetretailer.com/2012/06/14/global-e-commerce-sales-will-top-125-trillion-2013

[13] http://searchcio.techtarget.com/definition/B2B

[14] OECD Economic Outlook 67 and International Data Corporation (IDC). IDC is the premier global provider of market intelligence, advisory services, and events for the information technology, telecommunications and consumer technology markets. IDC helps IT professionals, business executives, and the investment community make fact-based decisions on technology purchases and business strategy.

e-commerce has received the most attention, partly because issues such as consumer trust and data protection have received considerable concern from policy makers.[15]

3. **Business-to-Government (B2G)**

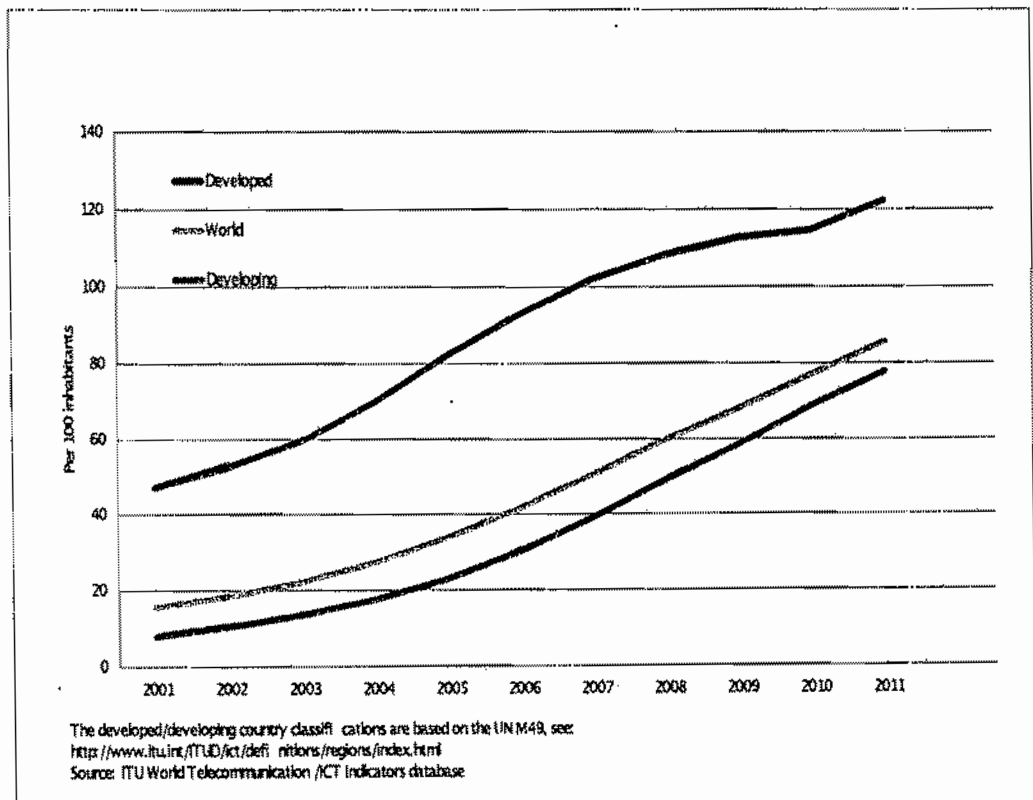
15. Business-to-Government or B2G commerce is generally defined as e-commerce between companies and the public sector. It refers to the use of the internet for public procurement, licensing procedures, and other government-related operations. In B2G e-commerce, the public sector generally assumes the pilot role in establishing e-commerce in an effort to make its procurement system more efficient. The size of the B2G e-commerce market as a component of total e-commerce is still rather insignificant as government e-procurement systems still remain comparatively undeveloped.[16]

VI. ACCESSING THE WORLDWIDEWEB THROUGH MOBILE TELEPHONY

16. The most popular ICT in developing countries and one which is progressing very rapidly in Africa and Asia, in particular India, is the mobile phone. Mobile phones are increasingly playing a larger role in the expansion of e-commerce in developing countries, especially amongst users without terminal connections. The chart below shows that in the past ten years, mobile-cellular subscriptions in developing countries have increased nearly tenfold. Not only have they helped to improve how businesses are run, they are also helping to close the poverty gap. Mobile phones are making it possible for rural farmers to engage in mobile money services, allowing them to open saving accounts, earn interest on their deposits and access a variety of credit and insurance products.[17]

17. Mobile e-commerce is exactly the same as e-commerce except that the access mechanism is via a wireless phone or terminal. In recent years many developing countries have seen a surge in mobile commerce. Internet penetration across Africa, for example, remains low and computers are often too expensive to purchase. However, there are currently 695 million mobile phone subscribers in Africa. This has given Africans a simple and pervasive means of sharing information and conducting business, even in spite of the fact that online business transactions can be logistically complicated to execute.[18]

Chart 5: Mobile-cellular subscriptions per 100 inhabitants, 2001-2011



Source: ITU

18. In many developing countries mobile phones are still mostly used for voice communication and texting. Recently, however, they are increasingly being used for data applications such as m-commerce and m-banking. In a number of African countries, notably Kenya, South Africa, Tanzania and Zambia, mobile telephones are being used to do personal banking services. And entrepreneurs are using calling and texting services to acquire locally relevant information and services. In the near future, internet-

[15] UNCTAD IER 2004
[16] E-commerce and E-Business, Zorayda Ruth Andam, UNDP-APDIP
[17] http://www.bbc.co.uk/news/10156667
[18] UNCTAD IER 2002.

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enabled phones may help to deliver the same services but more efficiently. Microenterprises and SMEs, many of which are in the informal sector in developing countries, appear to be the most positively affected by the adoption of mobile telephony. In the agriculture and fisheries sectors in Asia and Africa, for example, mobile phones are now frequently used to conduct sales and purchases, to establish delivery times and destinations and to negotiate prices. While these are classic transactions normally carried out over personal computers, they are being done on location using mobile technology. For fishermen, mobile phones are regularly used to check weather reports and to receive early warning announcements of severe weather conditions on land or at sea.[19]

19. This fast growth of mobile e-commerce stems from the cost advantage of mobile infrastructure over fixed-line installation. Mobile network consumers can simply buy a prepaid card and a handset at an affordable price (usually subsidized by the operator) and start using their mobile phone as soon as the first base stations are in place.[20] In recent years, a few innovative African companies have found ways to harness the potential of mobile commerce and information sharing, changing the way in which Africans communicate. This development has taken place in spite of the fact that online business transactions can still be logistically complicated to execute.[21]

20. Mobile web adoption is growing at a faster rate today than the internet did in the 1990s and early 2000s. Emerging markets like India, China, Turkey and Brazil have seen an exponential growth in mobile web use with figures that have surpassed mature markets. Mobile 3G subscriptions in the US grew by 26% in 2011 whereas Brazil, Turkey, China and India saw growth of 79%, 104%, 172% and 1,050% respectively.[22]

Table 1: Evolution of Mobile-cellular subscriptions per region

Mobile-cellular subscriptions	(millions)							(per 100 people)						
	2005	2006	2007	2008	2009	2010	2011	2005	2006	2007	2008	2009	2010	2011
Developed	992	1,127	1,243	1,325	1,384	1,413	1,514	82.1	92.9	102	108.3	112.6	114.5	122.3
Developing	1,215	1,619	2,126	2,706	3,263	3,898	4,457	22.9	30.2	39.1	49.1	58.4	68.9	77.8
World	2,207	2,747	3,369	4,031	4,647	5,311	5,972	33.9	41.7	50.6	59.9	68.2	77.1	85.7
Africa	87	129	174	246	297	363	434	12.4	17.9	23.5	32.4	38.2	45.6	53.1
Arab States	85	126	175	214	265	310	350	27.1	39.3	53	63.4	76.5	87.8	96.9
Asia and Pacific	834	1,074	1,398	1,773	2,166	2,625	3,009	22.6	28.8	37.1	46.6	56.3	67.6	76.7
CIS	166	227	267	312	356	377	408	59.7	81.8	96.1	112.2	127.7	135.1	146
Europe	550	610	677	714	718	726	747	91.6	101.1	111.6	117.1	117.1	117.9	120.8
The Americas	459	552	649	741	814	876	989	52.1	62	72.1	81.5	88.5	94.3	105.4

Source: ITU - Updated on June 2012

VII. HOW DO POORER COUNTRIES BENEFIT FROM MOBILE TELEPHONY?

21. Mobile telephony has transformed life for many consumers in developing countries. Mobile phones help improve the livelihood of the poor through better communications and greater access to information. Many poor farmers are now able to receive better prices for their crops because they have access to information on market prices, primarily via mobile phones. TradeNet, a Ghana-based trading platform, is one such example, allowing farmers to access prices and offers from traders by mobile phone.

22. Mobile phones have also spawned a wealth of micro-enterprises, offering work to people with little education and few resources, such as selling airtime and repairing or refurbishing handsets. In Bangladesh, for example, with micro-credit from the Grameen Bank, over 100,000 Bangladeshi women have set up mobile phone exchanges in villages where there are few if any landlines and are now earning their living as "Grameen phone ladies". Such village phone schemes have subsequently spread from Bangladesh to Uganda and Rwanda and to many other poor communities in LDCs.

23. Mobile phones have helped consumers to bridge the digital divide between regions in many developing countries. This is thanks to wireless technologies that enable the consumer to use mobile phones for communications and internet access without the need of a PC and cable connection. China and India are the two largest mobile phone markets amongst developing countries, and indeed in the world. However, similar to other developing countries, the mobile phone penetration rates in China and

[19] UNCTAD IER 2009.
[20] UNCTAD IER 2002.
[21] See http://news.rusbiz.com/newslist/290954.html
[22] http://www.mobify.com/about/

India remain relatively low, at 62.8% of the population and 51.6% respectively in 2010, leaving a significant potential for growth.

24. According to a 2010 International Telecommunications Union report on mobile phone penetration in developing countries, mobile cellular penetration in Africa stood at 45.2%. In Central and South America, it had grown to 94.5%. Meanwhile, across Asia and the Pacific in 2010, mobile cellular penetration stood at 69.2%, which was higher than mobile cellular penetration in Europe eight years earlier at 67%. In comparison, mobile phone use in Europe had grown to 117.7% by 2010.

25. The same report noted that internet user penetration in Africa grew over 20-fold in the decade to 2010, from 0.5 % to 10.8%, and that this gave Africa higher internet user penetration in 2010, than in the Commonwealth of Independent States (CIS) five years earlier. It noted that, in CIS, internet penetration grew from 10.2% in 2005 to 34% in 2010.

26. According to the report, LDCs forged ahead in mobile but still need to come on line. The ITU noted that in 2010, 833 million people were living in the 49 LDCs. In spite of these being the world's poorest countries, mobile phone services across the LDCs grew steadily throughout the first decade of the new millennium. It added that, in 2010, almost two thirds of people in LDCs, had mobile cellular coverage, with penetration reaching 34% up from just 5% only five years earlier, and close to the global figure for 2005. In just two of the 49 LDCs was mobile penetration still below 5% in 2010.[23]

Village Phones:

The concept of Village Phone is an idea which caught people's imagination. Grameen Bank members have entered the age of information technology by leasing and purchasing cellular phones. The mobile phones not only create a new business opportunity for the poor, but also bring access to information, market, health and other services to the remote rural areas of Bangladesh. This was a major innovation: placing modern cell phones in the hand of the woman from poorest households in remote villages, something that no telecom operator had dared to do in the past. With Grameen Bank financing a Grameen Bank borrower buys a mobile phone to become the Telephone Lady of the village. She provides the telecommunication services to the village while earning profits for herself. By the end of 2007, there were more than two hundred ninety-five thousand village phone ladies.

Source: http://www.Grameen-info.org

27. Some governments are tackling the problem of low mobile phone penetration through specific actions to encourage investment and development. In Chile for example, the government allotted spectrum in multiple bands for mobile broadband in underserved rural areas. Chile offered subsidies through a reverse auction (resulting in a government subsidy of more than US$100 million) to develop mobile broadband in around 1,500 municipalities in rural areas, where no broadband service was available. Extending coverage to these areas could mean that 90% of Chile's population would have broadband coverage. Minimum service conditions for broadband access and a ceiling on prices was established. The winner of the auction, Entel Movil, started deploying mobile broadband in these areas in September 2010. The rapid expansion of mobile broadband services in the country, has permitted Entel Movil to achieve the largest share of mobile broadband connections in the country, surpassing its other two main competitors.[24]

1. **What are the prospects of the global mobile market?**

28. Developing countries – particularly major emerging economies – will continue to drive growth of the global mobile phone market. This is due to their large population, low penetration rates and rising disposable incomes, although the true growth potential depends also on government policies to help liberalise the market and enhance competition among network providers. During 2011-2020, the number of mobile subscriptions in Africa and the Middle East is forecast to grow at an average rate of 5.6% per year, compared to the global average of 3.7%. However, the expected growth in Africa and the Middle East is from a relatively low base: in 2010, the mobile penetration rate in Africa stood at 56.5% of the population.

29. The Asia-Pacific region will continue to be the largest regional mobile phone market, with 3.9 billion subscriptions in 2020 (up from 2.4 billion in 2010). China will continue to be home to the world's largest number of mobile phone subscriptions, with 1.3 billion subscribers in 2020 (up from 839 million in 2010). However, India – currently the world's second largest mobile phone market – will have significant growth potential not only in the Asia-Pacific region but globally, with the number of mobile

[23] "http://www.i-policy.org/2011/09/mobile-penetration-leaps-as-internet-access-still-wobbles-in-97-economies-.htm"

[24] World Bank, Information and Communications for Development 2012.

phone subscriptions forecast to grow at an average annual rate of 5.7% during 2011-2020, to reach 1.1 billion in 2020. From a luxury product used primarily in developed countries, mobile telephony has become universally available. It is now an integral part of life for many.

30. Meanwhile, in the developed world, the commercial deployment of next-generation technologies and devices will increase usage of advanced mobile services, which in turn will open up many new, e-commerce business opportunities and especially in developing countries.[25] Meanwhile more data applications are now regularly being used in developing countries to conduct business (m-commerce), engage in retail or commercial banking activities (m-banking) and to find work (m-labour).

> **Low cost international capacity** is probably one of the key tipping points for improved internet access in developing countries and disadvantaged communities. In Kenya, for example, fixed and mobile broadband services exploded following the arrival of plentiful and cheap international bandwidth from competing submarine cables. International capacity in Kenya between 2002 and mid 2011 showed massive growth after submarine cables began to arrive in the country in mid-2009.
>
> *Source: World Wide Web Foundation 2011*

2. How do poorer countries benefit from mobile telephony? Agriculture, On-line supply and demand information, Fisheries and Labour mobilization

31. Mobile technology can be utilized by small and medium-sized businesses operating in the agricultural and fisheries sectors. It also has uses for labour and transport mobilization, for micro-credit services and for mobile money. This section provides an overview as to how mobile technology is being used by SME business operators in various sectors in developing countries. Some examples are provided.

3. Agriculture

32. Greater productivity can help boost farmers' income, especially for small-scale farmers and fishermen, who have limited resources to grow and market their produce. Creating a more efficient value chain at local or national levels also requires engaging many stakeholders, from farmers growing crops and raising cattle to suppliers and distributors. The potential benefits of using mobile phones to connect these diverse stakeholders along the agricultural value chain are numerous. For rural populations, many of which are geographically dispersed and isolated from commercial activity, the information and communication capabilities offered by the mobile phone are invaluable. Of the 6 billion phones in use today, some 70% are accessible to the world's poor and whose main source of income and employment comes from the agricultural sector. Mobile phones and other mobile devices have begun to change the way stakeholders in the agricultural sector make decisions regarding inputs, production, marketing, processing and distribution, all decisions that can potentially lead to greater efficiencies, reduced transaction costs and increased incomes.[26]

> *As has already been discussed, access to market information services can significantly increase a poor farmer's revenue and help bring the farmer over the poverty threshold. Manobi Development Foundation in Dakar, Senegal, for example, is an organisation that has done substantial work with and for SMEs. Its experience has shown that a poor developing country farmer who is marginally literate or who has never even had a mobile phone can easily and quickly circumvent both the education and the technology divide.*

33. Farmers in developing countries are increasingly utilizing mobile technology to increase their commercial potential. According to a World Bank study released in 2012, the benefits for farmers who use mobile phones includes access to agricultural information concerning stock piles and prices, data visibility for value chain efficiency and being able to tap into new and existing markets.[27] When farmers have access to information about prices and stocks, it helps them to reduce the risk of under-selling and of either over or under-supplying their crops in a given market. The World Bank study shows that access to price information by farmers has helped to increase farming income by 24%. Sellers realized even greater gains of up to 57% with overall price reductions for consumers of around 4%. Information transmitted by mobile phone also includes access to early warning systems to mitigate the risk of losses due to extreme weather conditions or to the spread of disease.

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[25] http://blog.euromonitor.com/2011/05/qa-the-importance-and-prospects-of-mobile-telephony.html

[26] Halewood, Naomi J. and Surya, Priya, Mobilizing the Agricultural Value Chain, "http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/IC4D-2012-Chapter-2.pdf"

[27] World Bank 2012 Information and communications for developing countries; Maximizing Mobile", 2012.

Lack of traceability during the growing and procurement process is a major constraint for producers growing for high-value export markets, such as specialty coffee. For the cooperatives and companies that manage the exports, emerging mobile technology—smartphones and tablets—can play a major role in capturing, tracking, and accessing valuable information from growing practices to crop quality. Sustainable Harvest is a coffee importer that works with 200,000 farmers in Latin America and East Africa. Extending its relationship-based procurement model to the digital platform, the organization and its farmer training offices have introduced a new coffee traceability program called the Relationship Information Tracking System, or RITS, to help coffee growers become more efficient, reliable, and quality-focused through a new mobile or tablet-based information tracking system. RITS provides farmer cooperatives with the ability to trace each step of the value chain using a cloud-based application. The application also tracks the certification status of each delivery, processes farmer payment, and generates reports on farmer productivity, payments, and samples. Roaster clients can access videos, photos, quality, and lot information from their supplier cooperatives. The application has been designed for Apple's iPad and iPhone, but it can be used in any smartphone through the web browser. Devices with large touchscreens allow for easier input of a large variety of information. The application can record information offline, and then upload to the online database when connectivity is restored. In 2011 Sustainable Harvest also launched RITS Ed, an iPad app that delivers agricultural training videos on organic coffee production and quality control that co-op managers can use to assist their members.

Sources:
http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/IG4D-2012-Report.pdf

34. Another benefit concerns sharing information and contacts over the mobile phone and setting up regional or national farmer organizations and even cooperatives. This helps to give farmers a collective voice and more visibility in agricultural value chains. Farmers or their respective cooperatives can establish links to large-scale suppliers and distributors, thereby obtaining key information on what and when to deliver. Through mobile phones, small-scale farmers are therefore able to leverage economies of scale by joining forces, pooling resources and increasing their bargaining power.

4. On-line data and information services

35. Mobile services can also enable better access to markets and other value-chain stakeholders. Sellers are increasingly using their websites to relay on-line information on transport and logistics, with some of these services being provided on mobile phones. For example, through the use of voice and short message service (SMS) in Morocco, farmers coordinate with local truckers to improve product transport and to identify where the best locations are for them to deliver their products. Some farmers also make use of two-way trade by bringing products back from larger, regional markets to sell in their own rural communities.

36. Product traceability has become increasingly relevant to those developing countries which want to gain or expand into new export markets. The use of ICT has led to improved consumer protection and food safety on the one hand and better livelihood outcomes for farmers on the other. Radio frequency identification (RFID) chips are also used to trace animal movement, enabling the monitoring of animals from cradle to grave. The use of the system in Namibia to replace traditional paper-based recording has increased the accuracy of the data and the speed in which it is disseminated, leading to higher monetary returns on livestock.

37. RFID has also been used for the prevention of animal poaching. Governments are now able to trace elephant and rhino herds and can take steps to mitigate illegal poaching activities. Such approaches are increasingly showing positive results in Africa and are contributing to sustainable development and to continued prospects for tourism.[28]

5. Market Access

38. Mobile phones, although owned and used by individuals, can nevertheless have an important impact in linking markets and key stages of the value chain. A recent study of farmers conducted in Bangladesh, China, India, and Viet Nam found that 80% of farmers in these countries owned a mobile phone and used them to connect with agents and traders in business-to-business transactions to estimate market demand and selling prices. The study found that more than 50% of these farmers would make

[28] http://news.mongabay.com/2012/0808-hance-ivory-forensics.html

arrangements for sale over the phone.[29] Another study found that as remote communities in Uganda were provided with access to a mobile network, the share of bananas sold rose from 50 to 69% of the crop.[30]

"**In June 2011, a grain trader arrived at my gate** offering me 30 kwacha per kilo for my peanuts," Sara Maunda said. "My SMS from Esoko told me that the price was more than four times the trader's price. When I showed him, he said, 'These people are lying to you—you will go very far and find that you have lost money.'" Maunda trusted both her instincts and the text messages. She and four neighbors rented a pick-up truck in Madisi, the nearest town, and headed south to Lilongwe, 80 kilometers away, to sell their groundnut crop themselves. She said "the market price there was five times the vendor's offer. My share of the sale cleared 24,000 kwacha ($130) after all expenses. If I had sold to the vendor at my village I would have made only 4,500 kwacha ($27)."
Source: USAID Frontlines July/August 2012

39. As mobile service and applications providers in agriculture become more knowledgeable about the needs of the farmers as well as their behaviour, they are developing increasingly sophisticated applications. In 2000, the Indian Tobacco Company (ITC), a large conglomerate in India, broke new ground by establishing e-Choupal—kiosks with computers—in rural villages, where farmers are able to access information about prices, planting times and methods and weather conditions. Since then the company has been working to provide its services over mobile phones and has piloted a new virtual commodity exchange, Tradersnet. The latter enables the direct purchase and sale of coffee, for example, by producers and wholesale purchasers over an internet-based trading platform. SMS messages are sent to users' mobile phones every morning with the offers available for purchase that day. At the end of the day, users receive another message with details as to what actually transpired.[31]

40. The company Esoko in Ghana was established by TradeNet to serve as a central repository for price information to be run by a centralized agency such as the government. The company is now a mobile and web-enabled repository of current market prices and a platform to enable buyers and sellers to make offers and connect to one another. Esoko has been able to offer differentiated services to a diverse customer base and, in a recent study of farmers with small land holdings in northern Ghana, it found that farmers had seen a 10% increase in revenue since they began receiving Esoko delivered market prices by SMS.[32]

6. Fisheries

41. New ICT products are also being used across the fisheries sector, from resource assessment, capture or culture to processing and commercialization. Some are specialist applications such as sonar devices for locating or tracking fish. Others are general purpose applications such as Global Positioning Systems (GPS) used for navigation and location finding. Mobile phones are mainly used for trading, information exchange and emergency contact within fishing communities. They are also being used to relay web-based information and networking resources. A wide range of technologies can be adapted and introduced in all but the most remote communities and, once appropriated by users, can have positive impacts on their lives. In a study on the fisheries sector it was concluded that "mobile phones reduced price dispersion and waste and increased fishermen's profits and consumer welfare."[33]

42. Like for agriculture, fishermen and merchants buying and selling fish communicate through voice calls, via SMS messages or by accessing specialist Wireless Application Protocol (WAP) services. The WAP is a technical standard for accessing information over a mobile wireless network. The WAP browser technology was created for older mobile devices. It allows users to access adapted web information and other data even if they do not have newer generation "smart" phones. New generation phones and higher bandwidth access are supplanting WAP in most developed countries. However, the need for low-cost mobile services and low penetration of newer phones has thus far kept WAP alive in many developing countries.

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[29] Minten B., T. Reardon, and K. Chen. n.d. "The Quiet Revolution of 'Traditional' Agricultural Value Chains in Asia Evidence from Staple Food Value to Four Mega-cities." Unpublished draft, International Food Policy Research Institute, Washington, DC.

[30] Muto, M., and T. Yamano. 2009. "The Impact of Mobile Phone Coverage Expansion on Market Participation: Panel Data Evidence from Uganda." *World Development* 37 (12): 1887–96. http://www.sciencedirect.com/science/article/pii/S0305750X09000965

[31] Naomi Halewood and Priya Surya. Mobilizing the Agricultural Value Chain, World Bank 2012 Information and Communications for Development.

[32] Halewood and Surya, Mobilizing the Agricultural Value Chain, World Bank 2012, Information and Communications for Development.

[33] Robert Jensen, "The Digital Provide: Information (Technology), Market Performance, and Welfare in the South Indian Fisheries Sector", The Quarterly Journal of Economics (2007) 122(3): 879-924, p. 919.

CASE STORY: MANOBI Senegal

In 2003, in collaboration with Sonatel (the Senegalese phone operator), Alcatel, IDRC and InfoDev, the Senegalese telecommunications company Manobi began to provide fishermen with real time weather reports and market prices using WAP and SMS technology via mobile phones. The interactive technology enabled fishermen to input fish stock information for marketing as well as departures and estimated times of return so that local fishing unions could be alerted in emergencies. The project successfully persuaded Sonatel to install a phone base station near the beach, ensuring network coverage up to 14km from the shore. In 2005, Manobi launched a Geographic Information System (GIS), using GPS and GSM technologies to increase protection at sea for fishermen and their boats, in partnership with insurance companies. It provides precise real-time localization up to 45 km offshore. Fishermen pay an insurance premium based on time spent at sea, with their mobile phones acting as security for both them and the insurance company.[34]

43. Before the introduction of WAP, mobile service providers had limited opportunities to offer interactive data services. They needed interactivity to support internet and such web applications as email by mobile phone, tracking of stock-market prices, sports results and news headlines. By using WAP browsers, fishermen can actually sell their catch while still out at sea with buyers and processors knowing the details of the day's catch well before the boat returns to port.

7. Labour Mobilization

44. Labour pools in many developing economies are comprised predominantly of low to semi-skilled workers. While high-skilled workers regularly use the internet to look for jobs, there is a lack of a centralized platform for job information for the semi-skilled. Since many cannot afford to regularly buy newspapers or visit cyber cafes to look for jobs, they have to rely on word of mouth. On the other hand, those who are providing jobs, are inundated with thousands of applications from jobseekers whose qualifications are not suitable for the positions in question. Since recruiting procedures cost companies a lot of time and considerable resources, mobile technology is seen as a way to mobilize labour markets. In India, for example, the company Babajob was inspired by the concept that most people improved their livelihoods through finding better paying jobs. However, many of the ways used to finding such better paying jobs used platforms which catered mainly to the professional community and not to those with few job skills. Babajob's platform, however, allows workers in India to find jobs in their respective fields.[35] Whilst Babajob uses SMS for user registration and information collection and distribution, new platforms using other protocols are being established in other developing countries. One of these is m-Kazi in Kenya which relies on Unstructured Supplementary Service Data (USSD), a protocol used by GSM cellular telephones to communicate with the service provider's computers.[36]

What is GSM? The Global System for Mobile Communications (GSM) standard was developed as a replacement for first generation (1G) analog cellular networks, and originally described a digital, circuit-switched network optimized for full duplex voice telephony. From its inception, GSM had basic text and data capabilities not possible on analogue phones and systems. This was expanded over time to include data communications, first by circuit switched transport, then packet data transport via GPRS (General Packet Radio Services) and EDGE (Enhanced Data rates for GSM Evolution or EGPRS). Further improvements were made when the 3GPP developed third generation (3G) universal mobile telecommunications system standards followed by fourth generation (4G) and more recently, so called LTE or Long Term Evolution advanecd standards.

45. USSD can be used for WAP browsing, prepaid callback service, mobile-money services, location-based content services, menu-based information services, and as part of configuring the phone on the network.

46. USSD messages are up to 182 alphanumeric characters in length. Unlike SMS, USSD messages create a real-time connection during a USSD session. The connection remains open, allowing a two-way exchange of a sequence of data. This makes USSD more responsive than services that only use SMS. USSD is a menu system that allows m-Kazi, for example, to capture jobseeker qualifications, location, and personal information in order to more effectively match the right employers to the potential employee (see text box).

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[34] New Directions in Fisheries, ICTs benefit Fishing Communities, FAO, 2007.
[35] http://mobileactive.org/case-studies/babajob-bringing-jobs-bottom-pyramid
[36] http://en.wikipedia.org/wiki/GSM

CASE STORY: M-KAZI, Kenya

m-KAZI is the first platform that serves the semi-skilled labour market in Sub-Saharan Africa. Its mobile recruitment tool efficiently connects jobseekers and employers. It allows jobseekers to register their qualifications using the most basic mobile phones and receive SMS alerts for jobs they qualify for. Employers can in turn target candidates on the m-KAZI database who meet their requirements. While the vast majority of Kenyans lack consistent access to the internet, over 65% of the population owns a mobile phone. The m-KAZI service can be used by anyone with access to a basic mobile phone and allows those with limited access to information to receive job opportunities anytime and anywhere. The use of mobile technology for recruitment results in more qualified candidates and ultimately higher quality employees, helping companies become more efficient.

m-Kazi services are accessible across the two major networks that hold 95% of the mobile market share in Kenya; Safaricom and Airtel.

m-KAZI's client base cuts across multinational companies, SMEs, NGOs and governmental or intergovernmental agencies. Due to the high turnover rate of semi-skilled labour, employers find this platform useful for rapid recruitment. SMEs especially the ones who cannot afford to use other tools for job vacancy advertisement (i.e. newspaper) and/or do not have time and resources to sort through thousands of CVs benefit the most. m-KAZI currently has over 4000 subscribers and anticipated a very large media campaign and influx of registrants in November 2012.

47. M-Kazi is already a success in Kenya and it plans to increase its portfolio across Sub-Saharan Africa. Similar platforms are slowly emerging. The ability for such services to efficiently mobilize the labour market, create employment and increase efficiency while reducing costs for SMEs is now gaining momentum. Expectations are that such services will continue to grow in developing countries.

VIII. MOBILE MONEY

48. Mobile money services are increasing in popularity. They have helped to improve how businesses operate and now they are also contributing to helping to close the poverty gap. One of the major barriers to poverty reduction is access to formal financial systems for the poor. The use of informal instruments means that the poor are limited in their ability to save, borrow, repay debt and manage risk responsibly. Mobile money services in developing countries are gaining in prominence mainly due to their effective way of conducting payments and providing access to finance, particularly in areas where access to physical bank branches or even ATM machines is minimal. They are helping to increase productivity and efficiency while at the same time reducing transaction costs.

49. Mobile financial services comprise mobile finance (including credit, insurance and savings), mobile banking (including transactional and informational) and mobile payments (including person-to-person, government-to-person and business-to-business).

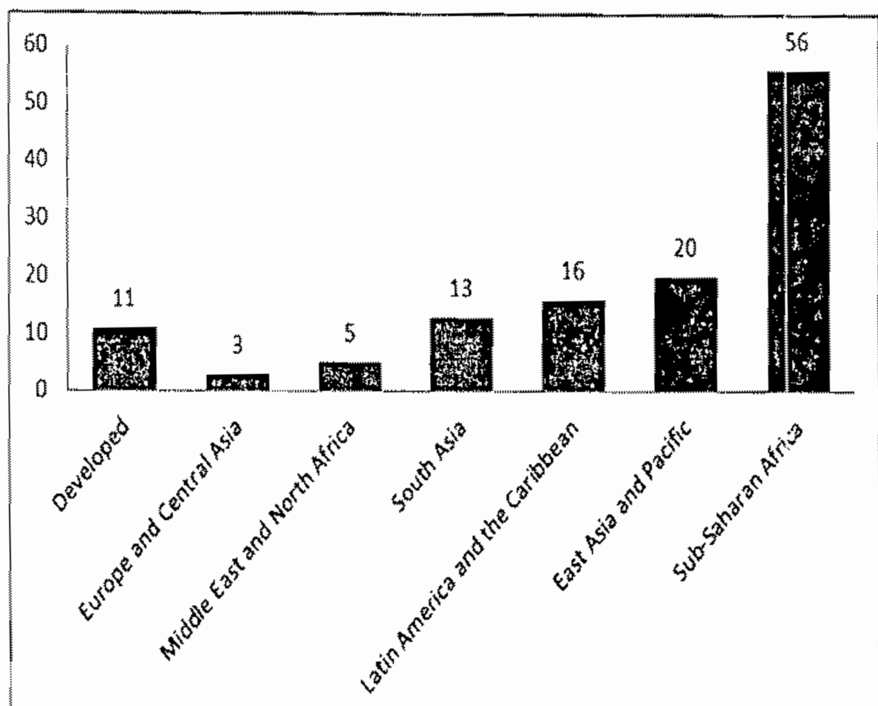
What is a Communications Protocol? A communications protocol is a system of digital message formats and rules for exchanging those messages in or between computing systems and in telecommunications. A protocol may have a formal description. Protocols may include signalling, authentication and error detection and correction capabilities. A protocol definition defines the syntax, semantics, and synchronization of communication; the specified behaviour is typically independent of how it is to be implemented. A protocol can therefore be implemented as hardware or software or both. Communications protocols have to be agreed upon by the parties involved. To reach agreement, a protocol may be developed into a technical standard. Communicating systems use well-defined formats for exchanging messages. Each message has an exact meaning intended to provoke a defined response of the receiver. A protocol therefore describes the syntax, semantics, and synchronization of communication. A programming language describes the same for computations, so there is a close analogy between protocols and programming languages: protocols are to communications what programming languages are to computations.

Source: http://en.wikipedia.org/wiki/Protocol

50. The graph below indicates that the use of mobile money in developing countries, especially in Sub-Saharan Africa is substantially more than other regions in the world. According to the World Bank, the potential advantages of the mobile money industry arise because of the inherent characteristics of the

services on offer; the widespread usage and network effects and the purposeful and innovative applications which are being designed to provide users with more efficient and easier operating systems.[37]

Chart 6: Number of Mobile Money Deployments by World Bank Region, March 2012



Source: GSMA Mobile Money Tracker 2012

1. Inherent Benefits

51. Mobile money is an accessible and convenient medium for the delivery of financial services and has already shown itself to be as, if not more reliable than traditional, informal methods of banking. In some countries, mobile banking services have been shown to be less expensive than average banking services. Lower costs therefore directly translate into extra income for the poor.

52. One of the most successful and fastest growing mobile banking services is M-Pesa, founded in April 2007 by Safaricom, a Kenyan telecommunications company. Safaricom launched the new mobile phone-based payment and money transfer service to offer its customers an array of services ranging from depositing money into an account stored on a customer's cell phone, to sending balances using SMS technology to other users (including sellers of goods and services) and to redeem deposits for regular money. It also allows users to settle their bills. Users are charged a small fee for sending and withdrawing money using the service. M-Pesa has spread quickly, and has become the most successful mobile phone-based financial service in any developing country. By 2012, in less than five years' time, a stock of about 17 million M-Pesa accounts had been registered in Kenya. M-Pesa is a branchless banking service, meaning that it is designed to enable users to complete basic banking transactions without the need to visit a bank branch. The continuing success of M-Pesa in Kenya has been due to the creation of a highly popular, affordable payment service with only limited involvement of a bank.[38]

53. Services supplied by M-Pesa are considered to be much safer than carrying important sums of cash in person. In addition, there are other benefits such as privacy and autonomy. These are especially important aspects for example for marginalized groups of women who, through such mobile money services, now have direct access to their personal savings accounts.

What is Mobile payment? Also referred to as mobile money, mobile money transfer, and mobile wallet generally refer to payment services operated under financial regulation and performed from or via a mobile device.

Financial institutions and credit card companies as well as internet companies such as Google and a number of mobile communication companies, such as mobile network operators and major telecommunications infrastructure such as w-HA from Orange and handset multinationals such as Ericsson have implemented mobile payment solutions.

Mobile payment is an alternative payment method. Instead of paying with cash, check or credit cards,

[37] WB, Maximizing Mobile, p. 63.
[38] http://en.wikipedia.org/wiki/M-Pesa

a consumer can use a mobile phone to pay for a wide range of services and digital or hard goods such as music, videos, ringtones, online game subscription or items and other digital goods. Users can also settle payments for transportation fare (bus, subway or train), parking and to make purchases of books, magazines, tickets and other hard goods.

There are four primary models for mobile payments: Premium SMS based transactional payments, Direct Mobile Billing, Mobile web payments (WAP) and Contactless NFC (Near Field Communication).

Additionally there is a new emerging model from Haiti: direct carrier/bank cooperation. Mobile payment is being adopted all over the world in different ways. The mobile payment market for goods and services, excluding contactless NFC transactions and money transfers, is expected to exceed $300 billion globally by 2013, which would be double the figure as of February 2011. In developing countries mobile payment solutions have been deployed as a means of extending financial services to the community known as the unbanked or under-banked, which is estimated to be as much as 50% of the world's adult population, according to Financial Access' 2009 Report "Half the World is Unbanked". These payment networks are often used for micropayments. The use of mobile payments for Financial Inclusion has attracted the interest and funding of international aid foundations like the Bill and Melinda Gates Foundation, USAID and MercyCorps.

Source: www.en.wikipedia.org/wiki/Mobile_payment

54. Mobile money is to date mainly being used for sending money. Access and use of more sophisticated financial services such as savings, credit and insurance could prove far more beneficial to the poor. Services such as those provides by Kilimo Salama, a micro-insurance product that uses M-PESA to provide pay outs to smallholder farmers whose crops fail are now being developed. As individuals develop financial histories with mobile money, the ability to provide credit can expand because financial institutions will be able to assign credit scores.

Through Kilimo Salama, farmers can minimize risk by paying an extra 5% for a bag of seed, fertilizer or other inputs from participating local agro-dealers. That translates to about nine Kenyan shillings (Kshs) to insure a one-kilogram bag of improved, higher-yielding maize seed, and 25 Kshs to insure a 10-kilogram bag of fertilizer. The agro companies participating in the program, MEA Fertilizers and Syngenta East Africa Limited, match the farmers' investment to cover the full 10% premium it takes to cover the cost of the programme. The project partners hope to expand the programme to include other agribusiness companies in the upcoming years.

Agro-dealers registered and trained by Kilimo Salama have been equipped with a camera phone that scans a special bar code at the time of purchase, which immediately registers the policy with UAP Insurance over the Safaricom's mobile data network. This innovative mobile phone application, which was developed by the Syngenta Foundation, then sends a text (SMS) message confirming the insurance policy to the farmer's mobile phone. Some 30 weather stations in the targeted regions have been renovated with automated, solar-powered systems capable of broadcasting regular updates on weather conditions and rainfall quantities. When data transmitted over Safaricom's 3G data network from a particular station indicates that drought or other extreme conditions (including excessive rains) are destined to cripple crops, all farmers registered with that station automatically receive payouts directly via Safaricom's M-PESA mobile money transfer service.

"This is the first project to use mobile phones to set up insurance contracts and issue payouts to poor, smallholder farmers in Africa, deploying both our vast data infrastructure and globally acclaimed M-PESA service," said Betty Mwangi, Chief Officer, New Products Division at Safaricom. "We are happy to support a project that organizes a complex business administration over our expansive national 3G network. The close link to rural shops and farmers insures that thousands of farmers will have fast, efficient, and reliable service and shows that there is great potential for many other applications that link mobile technology with the needs of farmers and people in rural areas. This is the kind of innovation that underwrites our market leadership."[39]

[39] www.sciencecodex.com/first_microinsurance_plan_uses_mobile

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IX. E-COMMERCE AND SMALL, MEDIUM ENTERPRISES

55. The term SME has a wide range of definitions varying from country to country and between the sources reporting SME statistics. Some of the commonly used criteria used to define an SME are net assets, number of employees and the levels of sales and investment. The most commonly used criterion used to define SMEs is, however, the total number of employees. Even the definition of an SME on the basis of a specific criterion is not uniform across countries. For instance, a specific country may define an SME to be an enterprise with less than 500 employees, while another country may define the cut-off to be 250 employees.[40]

56. In both developed and developing countries, SMEs make up a majority of business and employ the majority of workers in both manufacturing and services sectors. SMEs cater mostly to their domestic market and their contribution to GDP, although normally very small, can vary greatly depending on the value of the goods or services they produce. While less than 6% of the formal work force is employed in manufacturing in SMEs in Azerbaijan, Belarus and Ukraine, this share is more than 50% in other developing countries such as Ghana, Turkey and Ecuador.[41] Research has indicated that countries with large SME sectors also tend to benefit from the significant contribution which SMEs make to GDP.

57. An UNCTAD study has shown that SMEs, while generally lagging in ICT, have the most to gain from increases in productivity thanks to e-commerce. SMEs, however, actually run the risk of missing opportunities in both productivity and profitability by not engaging in e-business.[42] SMEs also have a large role to play in the economies of developing countries because it is in these same countries that have the greatest potential to benefit from e-commerce.[43] The extent of ICT use by SMEs is dependent on both sector and size of the business. Typically, those SMEs which are export or import-oriented as well those involved in the tourist sector have stronger incentives to invest in implementing ICTs in their respective businesses.[44]

58. Global developments and other competitive forces are increasingly driving firms to engage in ICT-based strategies. The growing interaction that SMEs are having with foreign suppliers and clients is leading most firms in developing countries to connect to the internet for e-mail purposes. The adoption of ICT by SMEs in developing countries is largely a market-driven process and eventually it is expected that competition in ICTs will lead to greater affordability and allow SMEs to engage more in e-commerce. Global competition is a major driver in this process, particularly for export-oriented businesses. Many buyers in developed countries which would like to purchase agricultural goods or handicrafts in developing countries expect their suppliers, usually SMEs in developing countries, to be connected to the global online supply chain.[45]

59. Although research has indicated that it is mostly large multinational companies that have benefitted the most from e-commerce, SMEs have been found to have the greatest potential for productivity gains through e-commerce. For most SMEs, however, the internet is mostly restricted to use by managers, for e-mail communication and for basic internet searches, particularly in developing countries with slow modes of access to the internet. Even in rare circumstances when SMEs have websites, the websites are generally limited to presenting goods and services on offer. It is unusual to see these same companies providing a means to purchase their products or services online.[46] Despite several studies that have demonstrated the correlation between ICT adoption and a company's profitability, one of the major reasons many enterprises have not integrated ICT and e-commerce into their business strategies is the perceived limited impact on business profitability often coupled with the argument that few suppliers and customers are actually online.[47] On the other hand, when SMEs are able to see the added benefits of using ICT, they are more willing to adapt their businesses strategies.[48]

60. E-commerce presents a number of opportunities for SMEs. The main reason lies in that e-commerce has the ability to become a field-leveller providing as many opportunities for SMEs in developing countries as in developed countries. Since all internet sites co-exist, small businesses have access to just as much internet space as do large multinational companies.[49]

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[40] http://siteresources.worldbank.org/DEC/Resources/84797-1114437274304/SME_globe.pdf
[41] http://siteresources.worldbank.org/DEC/Resources/84797-1114437274304/SME_globe.pdf
[42] UNCTAD IER 2004.
[43] UNCTAD IER 2004.
[44] UNCTAD IER 2011.
[45] UNCTAD IER 2004.
[46] UNCTAD Report 2005.
[47] UNCTAD IER 2004.
[48] UNCTAD IER 2004.
[49] E-Commerce: The next global frontier for small businesses. The Journal of Applied Business Research. Volume 17, Number 1.

61. SMEs in developing countries that are located in rural areas are usually more disadvantaged in terms of internet access. The rural-urban digital divide is created or exasperated by more expensive connection fees, an insufficient number of lines and unreliable internet connectivity.[50] Mobile commerce, however, now provides more opportunities for SMEs, especially in rural areas. Statistics indicate that mobile technology is actually spreading into rural areas at a rapid pace. According to the ITU, the percentage of the world not covered by a mobile cellular signal was 39% in 2003. By 2010, that figure had dropped to 10%.[51]

62. E-commerce has been hailed by many as an opportunity for developing countries to gain a stronger foothold in the multilateral trading system. E-commerce has the ability to play an instrumental role in helping economies benefit more from trade. Unlike the requirements necessary to run a business from a physical building, e–commerce does not require storage space, insurance, or infrastructure investment on the part of the retailer. The only pre-requisite is a well-designed web storefront to reach customers. Additionally, e-commerce allows for higher profit margins as the cost of running a business is markedly less.[52]

63. Another added advantage provided by e-commerce is that it allows for better and quicker customer service. In some cases customers could have direct access to their own personal accounts online and can avoid calling companies on the phone. This can save both time and money. Adding customer online services such as overnight package delivery services can also have commercial benefits. These can be complemented by package tracking services which allow customers to check the whereabouts of their packages online. This helps provide good levels of customer satisfaction with very little effort from the side of the business.[53]

X. POLICY ISSUES - WHAT RESTRICTS SMES FROM MORE FULLY USING E-COMMERCE?

64. E-Commerce is generally presented in very positive terms but, along with the potential benefits, come potential problems for developing countries. The adoption of e-commerce in developing countries differs greatly from one country to the other. But many face a number of similar obstacles to e-commerce. These mainly include a lack of financial, legal, and physical infrastructure for the development of e-commerce. The development of various types of e-commerce depends primarily on the existing structure of an industrial sector and how it fits into a given sectoral value chain. Additionally, the difference of cultures and business philosophies across developing countries has also been seen to limit the applicability and transferability of the e-commerce models designed by some developed countries.[54]

Regulating Bottlenecks in the Broadband Supply. Supplying broadband service involves a combination of network elements, processing, and business services that can be thought of as the broadband supply chain. This supply chain can be divided into four main components: (a) international connectivity; (b) domestic backbone; (c) metropolitan connectivity; and (d) local connectivity. Bottlenecks in any of the links of the chain will stifle competition and the development of broadband. Hence, effective regulatory frameworks must identify and address such instances of market failure in a timely and effective manner. As concerns domestic infrastructure or what some refer to as the national backbone infrastructure, a focus on networks is key. Constituting the second level of the network element supply chain, a country's high-capacity domestic backbone network is essential for broadband connectivity since it provides the link from international gateways to local markets as well as domestic connectivity between major cities and towns. However, backbone networks require extensive investments. A major impediment to reducing these costs, particularly in many developing countries, relates to vertical integration in which the backbone network providers are vertically integrated with the local access network operators. This results in a single end-to-end provider that can wield great market power. As such, other service providers may not have access to the backbone or may face high costs for interconnecting, a problem addressed in growing debates on open network access.[55]

65. Although SMEs have numerous reasons for engaging in e-commerce, the security concerns of the customers remain an important impediment to expanding e-commerce services and business. Probably, the biggest drawback is the reluctance of customers to provide online information about their credit cards.

[50] UNCTAD IER 2004.
[51] http://www.itu.int/ITU-D/ict/statistics/index.html
[52] UNCTAD IER 2004.
[53] http://www.manjeetss.com/articles/advantagesdisadvantagesecommerce.html
[54] See at: http://www.sciencedirect.com/science/article/pii/S0378720607000298 .Business-to-business adoption of eCommerce in China.
[55] Broadband Strategies Toolkit at: http://broadbandtoolkit.org/3.5

Ensuring both trust and familiarity through a well-functioning website has proven to be one of the major e-commerce success-factors.[56] In the same vein, the growth of broadband has created a greater need for users to protect their security and privacy in an "online" environment. Both individual users and businesses report that computer viruses are the "malware" they encounter the most.[57] Security continues to be a problem for online businesses as customers have to feel confident about the integrity of the payment process before they commit to the purchase.

Business Development Department inviting SMEs to make use of e-commerce

BANGKOK, 6 July 2012 – The Department of Business Development (DBD) is encouraging SME operators to seek new opportunities via e-commerce while introducing the DBD Registered symbol to ensure security for online shoppers.

Deputy Minister of Commerce Siriwat Kajornprasart revealed that he has assigned the DBD to support Thai SMEs in doing business via e-commerce. Due to the huge growth and increasing popularity of e-commerce, he said Thai SMEs should consider expanding their businesses online in order to find new opportunities and reduce production costs at the same time. E-commerce can also help enhance the potentials of Thai companies to compete in the international market.

Source: The Thai Financial Post Published on August 6, 2012

66 The potential of e-commerce can only be achieved given adequate infrastructure. In most developing countries this constraint presents a major obstacle. Smaller, low-income internet markets in developing countries, particularly in Africa, have been unable to attract sufficient investment in infrastructure, which combined with lack of competition – results in bandwidth cost that can be up to 100 times higher than in developed countries. In most cases, these countries remain outside the reach of fibre optic cables and must turn to satellites for international – and sometimes even domestic – connectivity. This happens even in spite of significant improvements brought about by technology.[58]

Peru enforces net neutrality, looks to roll out fibre backbone

25 July 2012 - The Peruvian government has announced that it will support the deployment of a national fibre-optic backbone for broadband access, Andina reports. The announcement followed the passing last week of the Law for the Promotion of Broadband and Construction of Optical Fibre Backbone. Telecoms regulator Osiptel will oversee the rollout, and ensure access is competitive, whilst the Agency for the Promotion of Private Investment (ProInversion) has been tasked with selecting a company to carry out the installation. Osiptel is understood to be drawing up technical criteria for the network, which will link all provincial capitals, and have connections to all districts. Further, the broadband bill ensures net neutrality, making it illegal for an internet service provider (ISP) to block, interfere with, discriminate against or restrict the right of any user to use an application, regardless of origin, destination or nature.[59]

67 Many have noted that the most significant factor that would enable the necessary broadband growth in developing countries is the existence of alternative broadband infrastructures, in particular cable. Furthermore, a number of developing countries also face challenges such as an unreliable supply of power which is another major cause for concern. Many SMEs also lack the logistics for the prompt and reliable delivery of goods and services particularly in the case of B2C e-commerce. These obstacles put SMEs at a distinct disadvantage.[60]

68 Another area of concern is the lack of technical skills which keeps SMEs from realizing their full e-commerce potential. Many developing countries do not have a workforce that has sufficient training in ICT and mobile technology. This greatly disadvantages many SMEs that may be seeking to diversify or to branch out into e-commerce. Making sure enterprises possess the required set of skills and capabilities to use relevant technologies productively is key to securing the economic benefits of e-commerce. Many entrepreneurs in developing countries, and especially in LDCs, lack the necessary capacity or awareness to take full advantage of ICTs. Even if they have access to mobile phones or the internet, they may not

[56] E-commerce: the role of familiarity and trust David Gefen, OMEGA, The International Journal of Management Science

[57] OECD, "http://www.oecd-ilibrary.org/sites/sti_scoreboard-2011-en/06/12/index.html;jsessionid=v04de9c27v1?delta=contentType=&itemId=/content/chapter/sti_scoreboard-2011-64-en&containerItemId=/content/serial/20725345&accessItemIds=/content/book/sti_scoreboard-2011-en&mimeType=text/html"

[58] UNCTAD IER 2004

[59] "www.telegeography.com/products/commsupdate/articles/2012/07/25/peru-enforces-net-neutrality-looks-to-roll-out-fibre-backbone."

[60] UNCTAD IER 2004

know how best to leverage them for their business operations. In some circumstances they may even fail to see the value of investing in the technology required so as to be able to take advantage of the opportunities of e-commerce.[61]

Chart 7: Enterprises with their own website, latest year 2006-2009 (%)

Region	Per cent of firms having their own Website
World	35.1
East Asia & Pacific	29.2
Eastern Europe & Central Asia	45
High-income OECD	76.7
Latin America & Caribbean	44.8
Middle East & North Africa	37.7
South Asia	22.8
Sub-Saharan Africa	20

Source: World Bank Enterprise Surveys

69. Slow internet diffusion in developing countries can be attributed to market and infrastructural factors controlling the availability of ICTs. In Tanzania, for instance, a lack of electrical supply, a low tele-density and a lack of purchasing power resulted in a low, rural internet usage. The cost of IT equipment can also discourage SME take up of e-commerce. The costs of computers, servers, parts etc. can be prohibitive for SMEs and can sometimes be subject to high tariffs or inconsistent tariff regimes. For example, providing incentives by lowering tariffs on computer terminals, but not on parts, can make buying lower cost replacement parts for simple repairs an unattractive option. Moreover, manufacturers of ICT products focus on large distributors often located in developed countries.

70. Financial infrastructure is also key. For example, the unavailability of credit cards can be a major hurdle. Past studies have found such problems for B2C e-commerce in Russia, India and Latin America. In Asia, 35–40% of transactions are cash-based. Other aspects of financial systems are also underdeveloped. In some countries and regions, local banks do not process online credit card transactions or other forms of electronic payment systems. Since mobile money targets the poor in developing countries and encompasses two very distinct industries (telecommunications and financial services), developing the necessary cross-sectoral partnerships - including bridging cultures and regulations - may therefore be difficult. Furthermore, in order to get the mobile money industry to be viable, agents and consumers have to be convinced at a large scale. Operators are faced with the trade-off between higher costs to recoup their investments or lower costs to reach scale and build a mass market.

[61] UNCTAD IER 2011.

Table 2: Business and consumer-level e-commerce barriers in the developing world

Barrier Type	Consumer Level		Business Level
Economic	Low credit card penetration. Lack of electrical supply. Low tele-density. Lack of purchasing power.	Low commerce Adoption rate among businesses	Underdeveloped financial systems. Internet less attractive for traditional economic sectors. Lack of economies of scale. Unavailability of ICT and other supporting infrastructure.
Sociopolitical	Inadequate legal protection for Internet purchases		Preference to face-to-face communications over e-mail. Precedence of established relationships. Lack of DES laws.
Cognitive	General and computer illiteracy and lack of English language skills. Lack of availability of local language websites. Lack of awareness and knowledge of e-commerce benefits. Lack of confidence in service providers.	Low ecommerce adoption rate among consumers	Lack of knowledge to use ICTs profitably. High degrees of risk aversion. Lack of workforce with e-commerce expertise.

Source: Kshetri, Nir. Barriers to e-commerce and competitive business models in developing countries, 2007 Elsevier B.V.

71. The internet is also less attractive for traditional economic sectors (e.g., agriculture) that account for a significant proportion of developing countries' economies. For instance, a study indicated that cost savings from e-commerce – as a per cent of total input costs – is only 2% for firms in traditional sectors such as coal compared to 40% in electronic components. The rapid growth of e-commerce in the US, for example, can be attributed to infrastructure already in place and an easy availability of a physical delivery system. Such systems are rarer in developing countries. In the Caribbean region, for example, logistics challenges are among major barriers to e-commerce diffusion. It is difficult for small developing countries and especially island states to attract FedEx and UPS to provide delivery services. Finally, bandwidth availability is low in developing countries. A lower bandwidth means that a longer time is needed to transfer data and hence a lower relative advantage of the internet.[62]

72. In a study published in 2008 on the adoption ICT by small hotel establishments in Southern Africa, some key factors were examined such as the role of government and government policy and attributes relating to the owners of the hotels, their organization and their ability to adopt more ICT in their commercial activities.[63] Even though the study focused on small hotels using the internet, many of the study's findings are applicable to other industries in which SMEs operate, such as sales and distribution of products, manufacturing and services trade. The study found that internet, websites and fixed-line and mobile phone networks are the most common technologies adopted by SMEs to support their e-business operations. The results also suggest both formal and informal networks as important for ICT adoption. These include key sources of information, technology and social and business support. In

[62] Kshetri, Nir. Barriers to e-commerce and competitive business models in developing countries, 2007 Elsevier B.V.

[63] ICT Adoption and Development of E-business among SMEs in South Africa
Knowledge Chinyanyu Mpofu: http://www.isbe.org.uk/Mpofu09

addition, financial and owner manager support, including personal skills and experience are also crucial in the adoption of ICT. Power outage is identified as a major barrier.

73. Government intervention is largely indirect and crucial in areas such as setting up of national ICT policy, infrastructure, dissemination of information, facilitating public-private partnerships, capacity building and constructing and maintaining a power supply. While obviously not a course of action for all SMEs in developing countries, research has shown that there are things SMEs can do to take more advantage of the internet possibilities. While many of these "Key Policy Recommendations" in the chart below require both large investments in infrastructure, people and equipment, there are options which governments might wish to follow should they really wish to maximize use of e-commerce generally.

Key Policy Recommendations made by the OECD for SMEs

• **Move beyond policies for basic connectivity and ICT readiness to facilitate more widespread uptake and use of complex ICT applications and e-business uptake by small firms.** Target programmes where there are demonstrated market failures (e.g. R&D incentives, frameworks for standards, skill formation, information and demonstrations on best practice and benefits from adoption and use of ICT), taking into account that commercial considerations and returns drive business adoption of new technologies.
• **Encourage rollout of affordable quality broadband networks to underpin the competitiveness and growth of SMEs.** Continue to liberalise network infrastructure and promote broadband competition and liberalisation in network services and applications. Where the needs exist, and without pre-empting private initiative or inhibiting competition, complement private investment with public financial assistance to expand coverage for under-served groups and remote areas.
• **Strengthen the infrastructure for trust, security (including spam and viruses), privacy and consumer protection.** Intellectual property protection of ICT innovations and digital products is necessary to build the confidence among SMEs that is essential if such firms are to take full advantage of the potential of domestic and cross-border on-line activities.
• **Expand, in conjunction with business and consumer groups, SMEs' use of low-cost on-line dispute resolution mechanisms.** Strengthen cross-border co-operation between stakeholders and the development of rules with cross-border application.
• **Develop and distribute digital content, including by expanding the commercial use of information about the public sector, education and health care.** E-government services to enterprises should be used as a tool to improve efficiency of government interactions and operations with SMEs.
• **Reduce ICT skill impediments to the growth of SMEs.** Strengthen government and private roles to improve basic ICT skills and developing frameworks to encourage higher level ICT and e-business skill formation (including marketing, organisational, security, trust and management skills in addition to ICT skills) in conjunction with education institutions, business and individuals.

Source: OECD, ICT, E-Business and SMEs, 2004

XI. CONCLUSION

74. This background note has examined different ways of using e-commerce and has looked at some specific sectors where SMEs are using the internet to sell their wares directly to customers through online transactions. As noted, a growing number of such transactions are now also taking place via mobile applications. This trend is to expand exponentially in the decades ahead. As has been seen, there is enormous potential for using information and communication technologies to contribute to the social and economic progress of developing countries worldwide.

75. Many entrepreneurs in developing countries and certainly many owners and managers of SMEs have a real possibility to benefit from ICTs in their day to day business activities. This has already resulted in gains in enhanced productivity, be it in the area of B2B, B2C or B2G e-commerce. However, as this paper shows, SMEs in many developing and LDCs are not always maximizing the use of the internet. In this regard, the role of governments and their various partners, including the private sector, need to take more advantage of the opportunities that are emerging in the new ICT landscape. And governments need to ensure that users benefit not only from being connected to the internet but also from any technological evolutions which can increase the speed of data flows and which can help reduce costs to consumers.

76. The paper has focused on how mobile telephony has transformed life for many in developing countries. Mobile phones help improve the livelihood of the poor through better communications and greater access to information. Many poor farmers are now able to receive better prices for their crops because they have access to information on market prices, primarily via mobile phones. The African company TradeNet, a Ghana-based trading platform, was provided as a key example.

77. Mobile phones have also spawned a wealth of micro-enterprises, offering work to people with little education and few resources, such as selling airtime and repairing or refurbishing handsets. When farmers have access to information about prices and stocks, it helps them to reduce the risk of under-selling and of either over or under-supplying their crops in a given market. Information transmitted by mobile phone also includes access to early warning systems to mitigate the risk of losses due to extreme weather conditions or to the spread of disease.

78. This background note has examined different ways of using e-commerce and has looked at some specific sectors where SMEs tap into vital market information on which their businesses depend. Others still are involved with the development or the dissemination of mobile services such as mobile banking, credit and insurance services.

79. It is important to remember, however, that SMEs are not alone in their involvement with e-commerce. The government and the private sector have vital roles to play not only in allowing e-commerce to take place but to ensure that it grows and benefits not only SMEs but also consumers. Much of the support to e-commerce depends on having or providing the right infrastructure, regulations and the policy mix allowing e-commerce to thrive.

80. High-quality and reliable transactions over the internet need advanced telecommunications systems and ones that offer broadband and mobile broadband services at affordable prices to both companies and private users. This requires an enabling environment where competition between telecommunications providers is robust. Also required is a workforce with solid ICT skills. Such skills are crucial for the further development of e-commerce and other mobile applications. The latter are critical in the quest to produce relevant and high-quality applications. Here too governments can play a vital role in ensuring that secondary and vocational schools teach the necessary skills to help build a viable digital economy and one that is capable of adapting to the needs of its users.

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ANNEX

Work on Electronic Commerce in the WTO's General Council and the Committee on Trade and Development

1. Following the Declaration on Global Electronic Commerce by the Geneva Ministerial Conference in 1998[64], the General Council adopted the same year a Work Programme on electronic commerce defining e-commerce as the production, distribution, marketing, sale or delivery of goods and services by electronic means.[65] The Work Programme foresaw a broad spectrum of issues related to electronic commerce that was to be examined by the Council for Trade in Services, the Council for Trade in Goods, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Committee on Trade and Development (CTD), with the General Council exercising an oversight function and considering any issue of a cross-cutting nature in Dedicated Discussions held under the auspices of that body.

Dedicated discussions under the auspices of the General Council

2. Since the inception of the Doha Round in 2001, seven dedicated discussions on electronic commerce have been held under the auspices of the General Council. A main issue throughout the discussions has been on the extensions of the moratorium on customs duties on e-commerce. While to date no agreement has been reached to make the moratorium permanent and binding, it was decided in December 2011 to maintain the moratorium in place until the Ninth Ministerial Conference in 2013. Other issues discussed throughout the period concerned such cross-cutting issues as questions related to the classification of the content of certain electronic transmissions, development-related issues, fiscal implications of e-commerce, the relationship (and possible substitution effects) between e-commerce and traditional forms of commerce, the imposition of customs duties on electronic transmissions, competition policies and the jurisdiction and applicable law and other legal issues. Most of these discussions, however, remained inconclusive with Members realizing that more work would be required to further clarify the various issues.

Work undertaken in the CTD

3. The Work Programme on electronic commerce requested the CTD to examine issues such as (i) the effects of e-commerce on the trade and economic prospects of developing countries and their SMEs in particular; (ii) the challenges and ways to enhance the participation of developing countries in e-commerce and the role of improved access to infrastructure and transfer of technology, and of movement of natural persons; (iii) the use of information technology in the integration of developing countries in the multilateral trading system; (iv) the impact on the traditional means of distribution of physical goods; and (v) the financial implications for developing countries.

4. In the years following the adoption of the Work Programme, the CTD addressed certain issues by inviting speakers from other international organisations, by discussing country experiences and by holding two seminars, i.e. on E-commerce and Development in 1999 and on Government Facilitation of E-commerce for Development in 2001. After the Doha Ministerial Conference in 2001, a seminar on the Revenue Implications of e-commerce was held in 2002. In 2003, the Secretariat and the CTD produced a background note[66] and a report[67] on the work that had been undertaken in the CTD on e-commerce.

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[64] WT/MIN(98)/DEC/2.
[65] WT/L/274.
[66] WT/COMTD/W/110.

5.. In 2011, a communication from Cuba, Ecuador, Nicaragua, the Pluri-national State of Bolivia and the Bolivarian Republic of Venezuela titled "Effective participation of developing countries in electronic commerce as a means to combat poverty"[68] provided new impetus to the CTD's work on e-commerce. In particular, Ministers decided at the Geneva Ministerial Conference on 17 December 2011 to instruct the General Council to emphasize and reinvigorate the development dimension in the Work Programme. This was to be done through the CTD which would examine and monitor development-related issues linked to e-commerce such as the need for technical assistance and capacity building and the facilitation of access to e-commerce by micro, SMEs, including small producers and suppliers, of developing countries and particularly of least-developed country Members.[69]

6. At the CTD's 85th Session held on 16 July 2012, Cuba and Ecuador proposed the idea of holding a Workshop on E-Commerce, Development and SMEs (WT/COMTD/W/189) and suggested that the Secretariat prepare a background paper on the subject and organize a workshop which would involve public and private sector representatives as well as individual experts.

7. At the CTD's 86th Session on 19 November 2012, it was agreed that the workshop on Electronic Commerce, Development and SMEs would be held on 8 and 9 April 2013. The two-day workshop would focus on the private sector, inter-governmental organizations and also non-governmental actors and would seek the active participation from SMEs from least-developed and developing countries located in Asia, Africa and the Latin American and Caribbean regions.

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[67] WT/COMTD/47.
[68] WT/GC/W/635-G/C/W/650-WT/COMTD/W/179, and its addendum.
[69] WT/L/843.

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

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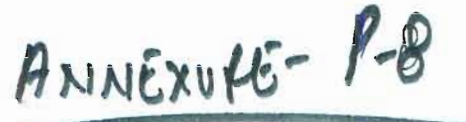
FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

Filed on 18.5.2015
NEW DELHI



e-COMMERCE IN DEVELOPING COUNTRIES

Opportunities and challenges for small and medium-sized enterprises

World Trade Organization

The World Trade Organization is the international body dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field for all its members. The WTO aims to place developing countries' needs and interests at the heart of its work programme.

What is e-commerce?

For the purposes of the trade focus of this brochure, e-commerce is the sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. Even though goods or services are ordered electronically, the payment and the ultimate delivery of the goods or services do not have to be conducted online.

An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organizations. Included in these electronic transactions are orders made over the web, extranet or electronic data interchange. The type of transaction made is defined by the method of placing the order. Normally excluded are orders made by telephone calls, fax or manually typed e-mails.

Workshop on E-Commerce, Development and Small and Medium-sized Enterprises

A workshop at the WTO on 8 and 9 April 2013 highlights the relationship between e-commerce and development and examines how small and medium-sized enterprises (SMEs) in developing countries have been using e-commerce to promote, market, service and sell their products nationally and abroad. The workshop focuses on both the opportunities and the challenges facing developing countries and assesses how such issues concerning adequate levels of telecoms infrastructure, regulation and investment either help or hinder SMEs from finding new opportunities through e-commerce.

This document has been prepared under the responsibility of the WTO Secretariat and is without prejudice to the positions of WTO members and to their rights and obligations under the WTO.

Introduction

Many small and medium-sized enterprises (SMEs) in developing countries have the possibility to benefit enormously from mobile telephony, the internet and other forms of information and communication technology (ICT) in their day-to-day business activities. This has already resulted in enhanced productivity in a number of areas.

However, SMEs in these countries are not always maximizing the use of ICT. Governments and their partners, including the private sector, need to take greater advantage of the opportunities emerging in the new ICT landscape. Also, governments need to ensure that users benefit not only from being connected to the internet but also from any technological evolutions that increase the speed of data flows and that can help reduce costs to consumers.

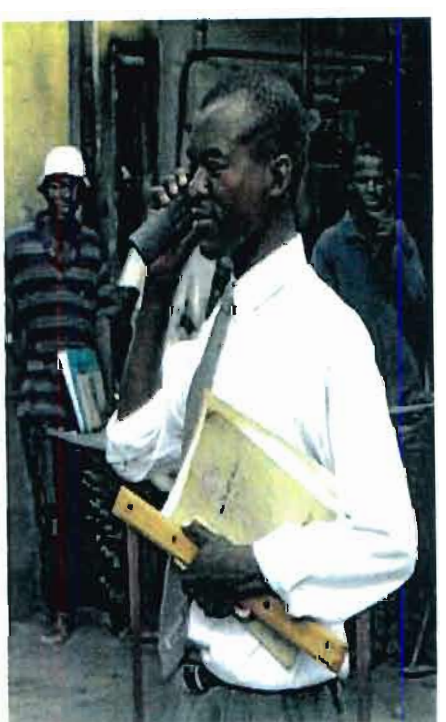
E-commerce and SMEs

In both developed and developing countries, SMEs make up a majority of business and employ the majority of workers in both manufacturing and services sectors. SMEs cater mostly to their domestic market and their contribution to GDP, although normally very small, can vary greatly depending on the value of the goods or services they produce. While less than 6 per cent of the formal work force is employed in manufacturing in SMEs in Azerbaijan, Belarus and Ukraine, this share is more than 50 per cent in other developing countries such as Ghana, Turkey and Ecuador. Research has indicated that countries with large SME sectors also tend to benefit from the significant contribution which SMEs make to GDP.

A study by the United Nations Conference on Trade and Development (UNCTAD) has shown that SMEs, while generally lagging in ICT, have the most to gain from increases in productivity thanks to e-commerce. SMEs, however, actually run the risk of missing opportunities in both productivity and profitability by not engaging in e-business. SMEs also have a large role to play in the economies of developing countries because it is these same countries that have the greatest potential to benefit from e-commerce. The extent of ICT use by SMEs is dependent on both sector and size of the business. Typically, those SMEs which are export or import-oriented as well those involved in the tourist sector have stronger incentives to invest in implementing ICT in their respective businesses.

E-commerce has been hailed by many as an opportunity for developing countries to gain a stronger foothold in the multilateral trading system. E-commerce has the ability to play an instrumental role in helping developing economies benefit more from trade. Unlike the requirements necessary to run a business from a physical building, e-commerce does not require storage space, insurance, or infrastructure investment on the part of the retailer. The only pre-requisite is a well designed web storefront to reach customers. Additionally, e-commerce allows for higher profit margins as the cost of running a business is markedly less.

Another advantage provided by e-commerce is that it allows for better and quicker customer service. In some cases, customers could have direct access to their own personal accounts online and can avoid calling companies on the phone. This can save both time and money. Adding customer online services such as overnight package delivery services can also have commercial benefits. These can be complemented by package tracking services which allow customers to check the whereabouts of their packages online. This helps provide good levels of customer satisfaction with very little effort from the side of the business.



Growth of the internet

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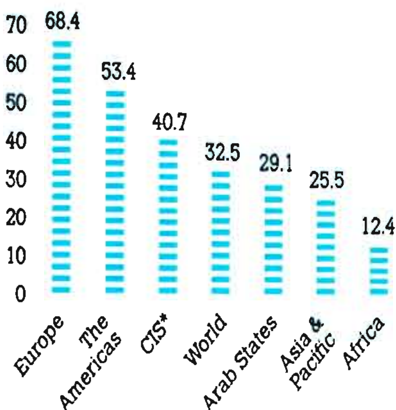
The first decade of the new millennium witnessed a profound change and dramatic increase in the way business and trade takes place electronically. Each day, more users in least-developed and developing countries are accessing the internet through terminals. A growing percentage of users are now also accessing the web through mobile technology. It is predicted that the internet and especially the use of mobile applications will expand exponentially in the decades ahead. There is enormous potential for using ICT to contribute to the social and economic progress of developing countries worldwide. A key role in this regard is played by SMEs.

UNCTAD's recent Information Economy Report 2010 shows how ICT use by micro enterprises and SMEs has improved not only business performance but has helped improve livelihoods in some of the world's poorest regions and communities. Many entrepreneurs in developing countries now have a real possibility to benefit from ICT in their business activities. In many cases, this has resulted in gains in enhanced productivity.

Chart 2

Individuals using the internet per 100 inhabitants, 2011

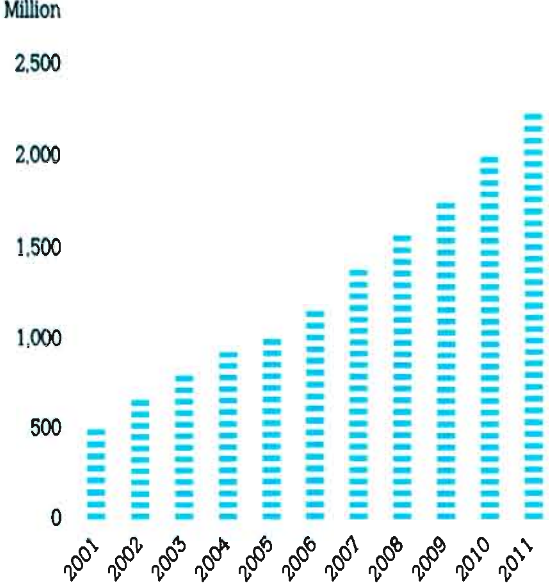


** Commonwealth of Independent States*

Source: ITU World Telecommunication / ICT Indicators database

Chart 1

Number of people using the internet, 2001-11



Source: International Telecommunication Union (ITU)

By improving communication channels, both domestically and internationally, the application of relevant ICT can greatly enhance the competitiveness of business. Government efforts to further improve, upgrade and expand ICT use by the private sector should, therefore, be reinforced. UNCTAD's study finds that governments and their various partners, including the private sector, are far from taking full advantage of the opportunities that are emerging in the new ICT landscape. This is evident in part from the relatively limited attention that has been given to ICT in strategies aimed at promoting private sector development.

Of all the internet users in 2011 (see Chart 1), 1.3 billion were from the Asia-Pacific region, the Middle East, Africa or Latin America, indicating a shift in the regions with the most people online. However, in spite of this growing trend in internet use, developed countries still continue to surpass developing countries in terms of number of connections.

Chart 2 highlights the number of individuals using the internet per 100 inhabitants. While the Africa region has a penetration rate of 12.4, Europe has the highest penetration rate, with 68.4 out of every 100 Europeans having access.

Growth of e-commerce

There is no question that e-commerce has grown rapidly since the first users started to browse the worldwide web in search of goods and services. Today, sales realized over the internet represent a significant proportion of overall commercial sales. In 1991, the internet had less than 3 million users around the world and its application to e-commerce was non-existent. Almost a decade later, by 1999, an estimated 300 million users accessed the internet and approximately one-quarter of them made purchases online from electronic commerce sites, worth approximately US$ 110 billion. This year, global business-to-consumer e-commerce sales are set to pass the US$ 1.25 trillion mark.

B2B, B2C or B2G?

There are numerous types of commercial transactions that occur online, from buying goods such as books or clothes to purchasing services such as airline tickets or making hotel or car rental reservations. Since the main focus of this brochure is on how SMEs use the internet, the discussion here concerns only a few services which relate closely to SME economic activity. These include electronic communications in the area of business to business (B2B), business to consumers (B2C), business to government (B2G) and mobile e-commerce.

Business to business (B2B)

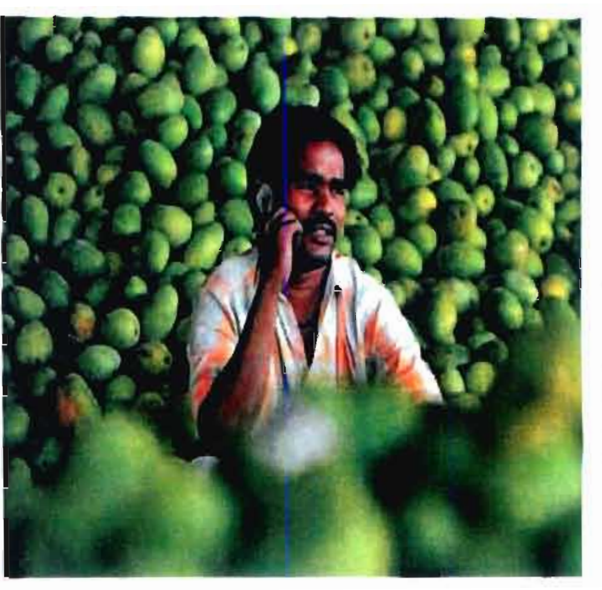
B2B is e-commerce between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. This is the exchange of products, services, or information between businesses rather than between businesses and consumers.

Global B2B transactions comprise 90 per cent of all e-commerce. According to research conducted by the US-based International Data Corporation (IDC), it is estimated that global B2B e-commerce, especially among wholesalers and distributors, amounted to US$ 12.4 trillion at the end of 2012. If the expansion in e-commerce continues at this rapid pace in developed markets as is expected, B2B and B2C e-commerce transactions will account for about 5 per cent of all inter-company transactions and retail sales by 2017.

Business to consumers (B2C)

B2C e-commerce entails businesses selling to the general public, typically through catalogues that make use of shopping cart software. Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions.

According to the IDC, global B2C transactions were estimated to reach US$ 1.2 trillion at the end of 2012, ten times less than B2B transactions. Although B2C e-commerce accounts for only a small share of e-commerce as a whole, it continues to grow. B2C e-commerce is highest in Norway, Denmark, Sweden, the United Kingdom and the United States and covers mainly computer-related products, clothing and digitized products.



Despite the low value of its transactions, B2C e-commerce has received the most attention, partly because issues such as consumer trust and data protection have received considerable concern from policy makers.

Business to government (B2G)

Business to government (B2G) commerce is generally defined as e-commerce between companies and the public sector. It refers to the use of the internet for public procurement, licensing procedures, and other government-related operations.

In B2G e-commerce, the public sector generally assumes the pilot role in establishing e-commerce in an effort to make its procurement system more efficient. The size of the B2G e-commerce market as a component of total e-commerce is still rather insignificant as government e-procurement systems still remain comparatively undeveloped.

Accessing the worldwide web through mobile telephony

The most popular ICT in developing countries and one which is progressing very rapidly in Africa and Asia, in particular India, is the mobile phone. Mobile phones are increasingly playing a larger role in the expansion of e-commerce in developing countries, especially among users without terminal connections.

Chart 3 shows that in the past ten years, mobile-cellular subscriptions in developing countries have increased nearly tenfold. Not only have they helped to improve how businesses are run, they are also helping to close the poverty gap. Mobile phones are making it possible for rural farmers to engage in mobile money services, allowing them to open saving accounts, earn interest on their deposits and access a variety of credit and insurance products.

In many developing countries, mobile phones are still mostly used for voice communication and texting. Recently, however, they are increasingly being used for data applications such as m-commerce and m-banking. In a number of African countries, notably Kenya, South Africa, Tanzania and Zambia, mobile telephones are being used to do personal banking services.

Entrepreneurs are using calling and texting services to acquire locally relevant information and services. In the near future, internet-enabled phones may help to deliver the same services but more efficiently. Micro enterprises and SMEs, many of which are in the informal sector in developing countries, appear to be the most positively affected by the adoption of mobile telephony.

In the agriculture and fisheries sectors in Asia and Africa, for example, mobile phones are now frequently used to conduct sales and purchases, to establish delivery times and destinations and to negotiate prices. While these are classic transactions normally carried out over personal computers, they are being done on location using mobile technology. For fishermen, mobile phones are regularly used to check weather reports and to receive early warning announcements of severe weather conditions on land or at sea.

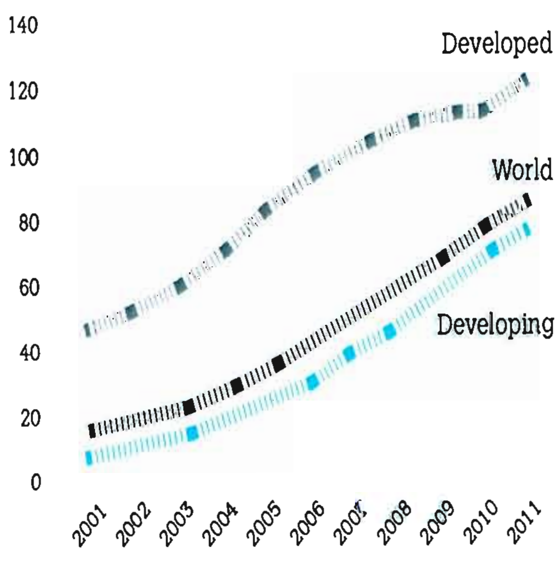
What are the prospects of the global mobile market?

Developing countries – particularly major emerging economies – will continue to drive growth of the global mobile phone market. This is due to their large population, low penetration rates and rising disposable incomes although the true growth potential depends also on government policies to help liberalize the market and enhance competition among network providers.

During 2011-20, the number of mobile subscriptions in Africa and the Middle East is forecast to grow at an average rate of 5.6 per cent per year, compared with the global average of 3.7 per cent. However, the expected growth in Africa and the Middle East is from a relatively low base: in 2010, the mobile penetration rate in Africa stood at 56.5 per cent of the population.

Chart 3

Mobile-cellular subscriptions per 100 inhabitants, 2001-11



Source: ITU World Telecommunications/ICT Indicators database

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The Asia-Pacific region will continue to be the largest regional mobile phone market, with 3.9 billion subscriptions in 2020 (up from 2.4 billion in 2010). China will continue to be home to the world's largest number of mobile phone subscriptions, with 1.3 billion subscribers in 2020 (up from 839 million in 2010).

However, India – currently the world's second-largest mobile phone market – will have significant growth potential not only in the Asia-Pacific region but globally, with the number of mobile phone subscriptions forecast to grow at an average annual rate of 5.7 per cent during 2011-20, to reach 1.1 billion in 2020. From a luxury product used primarily in developed countries, mobile telephony has become universally available. It is now an integral part of life for many.

Meanwhile, in the developed world, the commercial deployment of next-generation technologies and devices will increase usage of advanced mobile services, which in turn will open up many new, e-commerce business opportunities and especially in developing countries. Meanwhile, more data applications are now regularly being used in developing countries to conduct business (m-commerce), engage in retail or commercial banking activities (m-banking) and to find work (m-labour).

Mobile phone revolution

The number of mobile phones in use worldwide between 2000 and 2012 grew from less than 1 billion to more than 6 billion. The mobile revolution is transforming livelihoods, helping to create new businesses, and changing the way we communicate, work and earn and spend income. The mobile phone network is already "the biggest machine" the world has ever seen, and now that machine is being used to deliver development opportunities on a scale never before imagined. During this second decade of the new millennium, maximizing the potential of mobile phones is a challenge that will engage governments, the private sector, and the development community alike.

Source: World Bank, Information and Communications for Development 2012: Maximizing Mobile

How do poorer countries benefit from mobile telephony?

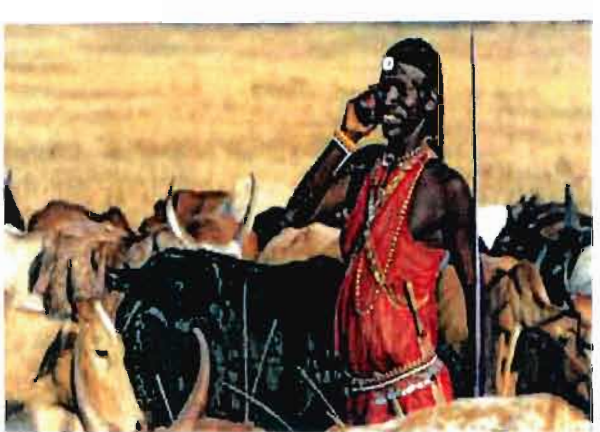
Mobile technology can be utilized by SMEs operating in the agricultural and fisheries sectors. It also has uses for labour and transport mobilization, for micro-credit services and for mobile money. This section provides an overview as to how mobile technology is being used by SME business operators in various sectors in developing countries.

Agriculture

Greater productivity can help boost farmers' income, especially for small-scale farmers and fishermen, who have limited resources to grow and market their produce. Creating a more efficient value chain at local or national levels also requires engaging many stakeholders, from farmers growing crops and raising cattle to suppliers and distributors.

Farmers in developing countries are increasingly utilizing mobile technology to increase their commercial potential. According to a World Bank study released in 2012, the benefits for farmers who use mobile phones includes access to agricultural information concerning stock piles and prices, data visibility for value chain efficiency and being able to tap into new and existing markets.

When farmers have access to information about prices and stocks, it helps them to reduce the risk of under-selling and of either over or under-supplying their crops in a given market. The World Bank study shows that access to price information by farmers has helped to increase farming income by 24 per cent. Sellers realized even greater gains of up to 57 per cent, with overall price reductions for consumers of around 4 per cent.



Information transmitted by mobile phone also includes access to early warning systems to mitigate the risk of losses due to extreme weather conditions or to the spread of disease.

Online data and information services

Mobile services can also enable better access to markets and other value-chain stakeholders. Sellers are increasingly using their websites to relay online information on transport and logistics, with some of these services being provided on mobile phones.

For example, through the use of voice and SMS in Morocco, farmers coordinate with local truckers to improve product transport and to identify where the best locations are for them to deliver their products. Some farmers also make use of two-way trade by bringing products back from larger, regional markets to sell in their own rural communities.

Case study

Sara Maunda, groundnut farmer Malawi

"In June 2011, a grain trader arrived at my gate offering me 30 kwacha per kilo for my peanuts", Sara Maunda said. "My SMS from Esoko told me that the price was more than four times the trader's price. When I showed him, he said, 'These people are lying to you – you will go very far and find that you have lost money.'"

Maunda trusted both her instincts and the text messages. She and four neighbours rented a pick-up truck in Madisi, the nearest town, and headed south to Lilongwe, 80 kilometres away, to sell their groundnut crop themselves. She said: "the market price there was five times the vendor's offer. My share of the sale cleared 24,000 kwacha ($130) after all expenses. If I had sold to the vendor at my village I would have made only 4,500 kwacha ($27)."

Source: USAID Frontlines July/August 2012

Product traceability has become increasingly relevant to those developing countries that want to gain or expand into new export markets. The use of ICT has led to improved consumer protection and food safety on the one hand and better livelihood outcomes for farmers on the other. Radio frequency identification (RFID) chips are also used to trace animal movement, enabling the monitoring of animals from cradle to grave. The use of the system in Namibia to replace traditional paper-based recording has increased the accuracy of the data and the speed in which it is disseminated, leading to higher monetary returns on livestock.

RFID has also been used for the prevention of animal poaching. Governments are now able to trace elephant and rhino herds and can take steps to mitigate illegal poaching activities. Such approaches are increasingly showing positive results in Africa and are contributing to sustainable development and to continued prospects for tourism.

Fisheries

Fishermen and merchants buying and selling fish communicate through voice calls, via SMS messages or by accessing specialist Wireless Application Protocol (WAP) services. WAP is a technical standard for accessing information over a mobile wireless network.

The WAP browser technology was created for older mobile devices. It allows users to access adapted web information and other data even if they do not have newer generation "smart" phones. New generation phones and higher bandwidth access are supplanting WAP in most developed countries. However, the need for low-cost mobile services and low penetration of newer phones has thus far kept WAP alive in many developing countries.

Case study
Manobi telecoms company Senegal

In 2003, in collaboration with Sonatel (the Senegalese phone operator), Alcatel, IDRC and InfoDev, the Senegalese telecommunications company Manobi began to provide fishermen with real time weather reports and market prices using WAP and SMS technology via mobile phones.

The interactive technology enabled fishermen to input fish stock information for marketing as well as departures and estimated times of return so that local fishing unions could be alerted in emergencies. The project successfully persuaded Sonatel to install a phone base station near the beach, ensuring network coverage up to 14 km from the shore.

In 2005, Manobi launched a Geographic Information System (GIS), using GPS and GSM technologies to increase protection at sea for fishermen and their boats, in partnership with insurance companies. It provides precise real-time localization up to 45 km offshore. Fishermen pay an insurance premium based on time spent at sea, with their mobile phones acting as security for both them and the insurance company.

Mobile money

Mobile money services are increasing in popularity. They have helped to improve how businesses operate and now they are also contributing to helping to close the poverty gap. One of the major barriers to poverty reduction is access to formal financial systems for the poor. The use of informal instruments means that the poor are limited in their ability to save, borrow, repay debt and manage risk responsibly.

Mobile money services in developing countries are gaining in prominence mainly due to their effective way of conducting payments and providing access to finance, particularly in areas where access to physical bank branches or even ATM machines is minimal (see Chart 4). They are helping to increase productivity and efficiency while at the same time reducing transaction costs.

One of the most successful and fastest growing mobile banking services is M-Pesa, founded in April 2007 by Safaricom, a Kenyan telecommunications company.

Safaricom launched the new mobile phone-based payment and money transfer service to offer its customers an array of services, ranging from depositing money into an account stored on a customer's cell phone to sending balances using SMS technology to other users (including sellers of goods and services) and to redeem deposits for regular money. It also allows users to settle their bills. Users are charged a small fee for sending and withdrawing money using the service.

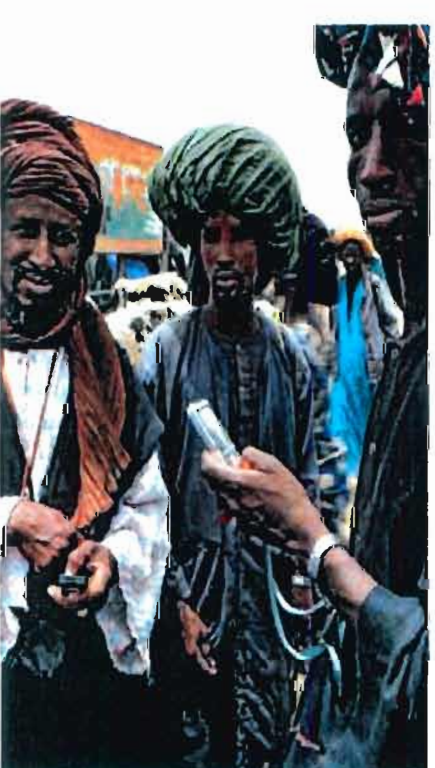
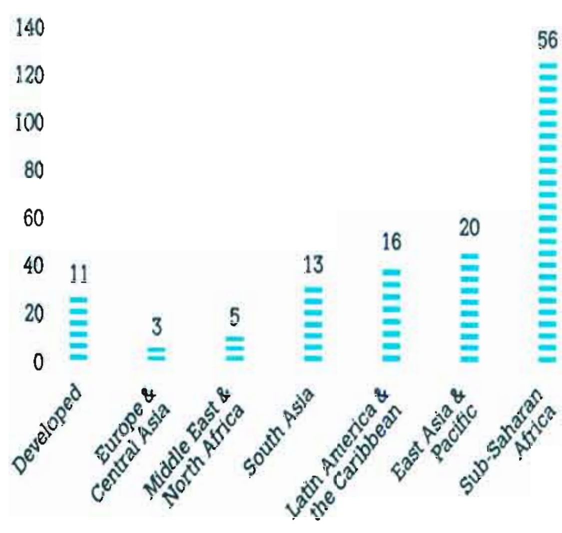


Chart 4

Number of mobile money deployments by region, March 2012



Source: GSMA Mobile Money Tracker 2012

M-Pesa has spread quickly and has become the most successful mobile phone-based financial service in any developing country. By 2012, a stock of about 17 million M-Pesa accounts had been registered in Kenya.

M-Pesa is a branchless banking service, meaning that it is designed to enable users to complete basic banking transactions without the need to visit a bank branch. The continuing success of M-Pesa in Kenya has been due to the creation of a highly popular, affordable payment service with only limited involvement of a bank.

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What restricts SMEs from making fuller use of e-commerce?

E-commerce is generally presented in very positive terms but along with the potential benefits come potential problems for developing countries. The **adoption of e-commerce** in developing countries differs greatly from one country to the other. But many face a number of similar obstacles to e-commerce. These mainly include a lack of financial, legal and physical infrastructure for the development of e-commerce.

The development of various types of e-commerce depends primarily on the existing structure of an industrial sector and how it fits into a given sectoral value chain. Additionally, the difference of cultures and business philosophies across developing countries has also been seen to limit the applicability and transferability of the e-commerce models designed by some developed countries.

Although SMEs have numerous reasons for engaging in e-commerce, the security concerns of the customers remain an important impediment to expanding e-commerce services and business. Probably, the biggest drawback is the reluctance of customers to provide online information about their credit cards.

Ensuring both trust and familiarity through a well-functioning website has proven to be one of the major e-commerce success factors. In the same vein, the growth of broadband has created a greater need for users to protect their security and privacy in an "online" environment. Both individual users and businesses report that computer viruses are the "malware" they encounter the most. Security continues to be a problem for online businesses as customers have to feel confident about the integrity of the payment process before they commit to the purchase.

The potential of e-commerce can only be achieved given adequate infrastructure. In most developing countries, this constraint presents a major obstacle. Smaller, low-income internet markets in developing countries, particularly in Africa, have been unable to attract sufficient investment in infrastructure. Combined with lack of competition, this results in bandwidth cost that can be up to 100 times higher than in developed countries.

Case study

Business Development Department, Thailand

Thailand's Department of Business Development (DBD) is encouraging SME operators to seek new opportunities via e-commerce while introducing the DBD Registered symbol to ensure security for online shoppers.

Deputy Minister of Commerce Siriwat Kajornprasart revealed that he has assigned the DBD to support Thai SMEs in doing business via e-commerce. Due to the huge growth and increasing popularity of e-commerce, he said that Thai SMEs should consider expanding their businesses online in order to find new opportunities and reduce production costs at the same time. E-commerce can also help enhance the potentials of Thai companies to compete in the international market.

Source: Thai Financial Post published on 6 August 2012

Case study

Peruvian government, fibre-optic initiative

The Peruvian government has announced that it will support the deployment of a national fibre-optic backbone for broadband access, Andina reports. The announcement followed the passing last week of the Law for the Promotion of Broadband and Construction of Optical Fibre Backbone.

Telecoms regulator Osiptel will oversee the rollout, and ensure access is competitive, whilst the Agency for the Promotion of Private Investment (ProInversion) has been tasked with selecting a company to carry out the installation. Osiptel is understood to be drawing up technical criteria for the network, which will link all provincial capitals, and have connections to all districts.

Further, the broadband bill ensures net neutrality, making it illegal for an internet service provider (ISP) to block, interfere with, discriminate against or restrict the right of any user to use an application, regardless of origin, destination or nature.

Source: TeleGeography, published on 25 July 2012

In most cases, these countries remain outside the reach of fibre optic cables and must turn to satellites for international – and sometimes even domestic – connectivity. This happens even in spite of significant improvements brought about by technology.

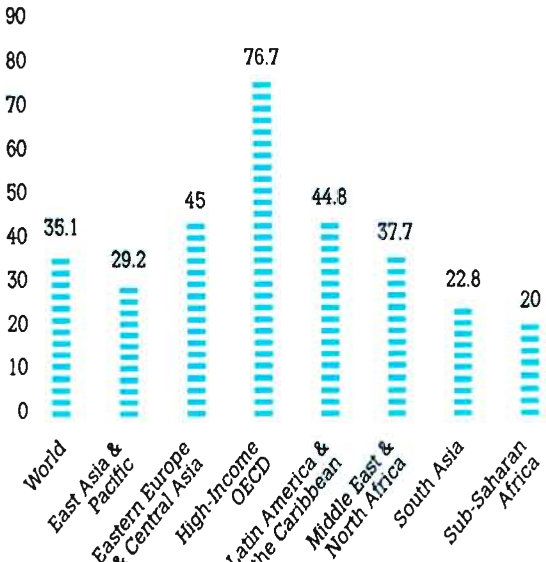
Another area of concern is the lack of technical skills which keeps SMEs from realizing their full e-commerce potential. Many developing countries do not have a workforce that has sufficient training in ICT and mobile technology. This greatly disadvantages many SMEs that may be seeking to diversify or to branch out into e-commerce.

Making sure enterprises possess the required set of skills and capabilities to use relevant technologies productively is key to securing the economic benefits of e-commerce. Many entrepreneurs in developing countries, and especially in least-developed countries, lack the necessary capacity or awareness to take full advantage of ICT (see Chart 5).

Even if entrepreneurs in developing countries have access to mobile phones or the internet, they may not know how best to leverage them for their business operations. In some circumstances they may even fail to see the value of investing in the technology required so as to be able to take advantage of the opportunities of e-commerce.

Chart 5

Enterprises with their own website, 2006-09 (in %)



Source: World Bank Enterprise Surveys

Conclusions

This brochure has focused on how e-commerce and mobile telephony have transformed the lives of many people in developing countries. Access to the internet and mobile phones help improve the livelihood of the poor through better communications and greater access to information. Many poor farmers are now able to receive better prices for their crops because they have access to information on market prices. The African company TradeNet, a Ghana-based trading platform, is a key example.

The internet and mobile phones have also spawned a wealth of micro-enterprises, offering work to people with little education and few resources, such as selling airtime and repairing or refurbishing handsets. When farmers have access to information about prices and stocks, it helps them to reduce the risk of under-selling and of either over or under-supplying their crops in a given market. Information transmitted by mobile phone also includes access to early warning systems to mitigate the risk of losses due to extreme weather conditions or to the spread of disease.

This brochure has examined different ways of using e-commerce and has looked at some specific sectors where SMEs tap into vital market information on which their businesses depend. Others still are involved with the development or the dissemination of mobile services such as mobile banking, credit and insurance services.

It is important to remember, however, that SMEs are not alone in their involvement with e commerce. The government and the private sector have vital roles to play not only in allowing e commerce to take place but to ensure that it grows and benefits not only SMEs but also consumers. Much of the support to e-commerce depends on having or providing the right infrastructure, regulations and the policy mix allowing e-commerce to thrive.

High-quality and reliable transactions over the internet need advanced telecommunications systems and ones that offer broadband and mobile broadband services at affordable prices to both companies and private users. This requires an enabling environment where competition between telecommunications providers is robust. Also required is a workforce with solid ICT skills. Such skills are crucial for the further development of e-commerce and other mobile applications. The latter are critical in the quest to produce relevant and high-quality applications. Here too, governments can play a vital role in ensuring that secondary and vocational schools teach the necessary skills to help build a viable digital economy and one that is capable of adapting to the needs of its users.

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World Trade Organization
Centre William Rappard
Rue de Lausanne 154
CH-1211 Geneva 21
Switzerland
Tel.: +41 (0)22 739 51 11
Fax: +41 (0)22 731 42 06
email: enquiries@wto.org
website: www.wto.org

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Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy

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United States International Trade Commission

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Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

United States International Trade Commission

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This report was prepared principally by:

Project Leaders
Renee Berry and William Powers
renee.berry@usitc.gov, william.powers@usitc.gov

Deputy Project Leaders
Alissa Tafti and Mihir Torsekar
alissa.tafti@usitc.gov, mihir.torsekar@usitc.gov

Office of Industries
Laura Bloodgood, Logan Cobb, Andrew David, Tiffany Eder, John Giamalva, Mahnaz Khan, Katherine Linton, Elizabeth Nesbitt, Jennifer Powell, Philip Stone, and Michael Stanton-Geddes

Office of Economics
Tani Fukui, Jeffrey Horowitz, Lin Jones, David Riker, Marinos Tsigas, Ravinder Ubee, and Bennet Voorhees

Office of Analysis and Research Services
Robert Bauchspies, Peg Hausman, Maureen Letostak, David Lundy, Waleed Navarro, and John Stephens

Interns (Economics and Industries)
Matthew Barkell, Eleanor Coates, Joyce Hahn, Hong Han, Myles Hungerford, and Kimberly Lovejoy

Office of General Counsel
William Gearhart

Content Reviewers
Arona Butcher and Deborah McNay

Document Preparation and Design
Phyllis Boone, Monica Sanders, and Blair Williams

Statistical Reviewer
Jeremy Wise

Office of CIO
Deborah Daniels, Shala Ewing, and Sonya Wilson

Under the direction of
William Powers, Chief
Research Division

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Chapter 7
Barriers to Foreign Direct Investment in India

Introduction

Foreign direct investment (FDI) in India has expanded rapidly in recent years. Total FDI equity flows into India during the five fiscal years 2006 through 2010 were almost seven times the total from the preceding five fiscal years.[520] The stock of U.S. investment[521] in India rose by a factor of almost six from 2001 to 2007, and nearly doubled again by 2012.[522] At the same time, however, many investors have identified certain Indian barriers to or restrictions on FDI that prevent or inhibit them from investing in India. These measures include both "horizontal" restrictions, which apply to investors in all industries, and restrictions that apply to investment in particular industries.

Table 7.1 describes the major Indian FDI policies and the U.S. industries that are most affected by them. The survey found that the FDI barrier faced by the largest share of firms engaged in both goods and services industries in India was difficulty getting required permits, approvals, or licenses for investment. For firms in certain industries, particularly financial services, equity limits were particularly important. Most of India's barriers to foreign investment apply to the services sector and to defense and aerospace, which have experienced some liberalization in recent years.

This chapter reviews India's FDI restrictions and policies that apply to investment in all industries; identify changes over time with respect to the investment climate in particular

[520] Government of India, MOCI, DIPP, Fact Sheet on FDI, August 2014. India reports FDI data in fiscal years that run from April to the following March.

[521] Foreign direct investment is defined as ownership or control by a foreign resident, directly or indirectly, of at least 10 percent of an Indian business enterprise. The FDI stock, or position, is the value of direct investors' equity in, and net outstanding loans to, their affiliates. The direct investment position may be viewed as the direct investors' net financial claims on their affiliates. USDOC, BEA, "U.S. International Economic Accounts: Concepts and Methods," G-4, http://www.bea.gov/international/pdf/concepts-methods/Glossary.pdf (accessed October 27, 2014).

[522] The U.S. stock of overseas investment in India was $2.5 billion in 2001, $14.6 billion in 2007, and $27.4 billion by 2012. Later years not available. USDOC, BEA, Annual Data: Position on a Historical Cost Basis 2000–2012 (accessed April 7, 2014).

Table 7.1: Indian FDI restrictions and the U.S. industries most affected

Policy	Description of the barrier	U.S. industries most affected
FDI equity limits	For certain industries, India limits the total equity stake that foreign investors can hold in an Indian firm, and/or limits the aggregate share that all foreign investors can hold.	Retail, insurance, defense and aerospace, telecommunications, banking, publishing, broadcasting, aviation
Foreign investment authorization process	Investment proposals in certain industries and in certain circumstances are subject to pre-authorization by India's Foreign Investment Promotion Board.	Applies to industries that face equity limits (retail, insurance, defense and aerospace, telecommunications, banking, publishing, broadcasting, aviation), and to other investment proposals in specific circumstances
Restrictions on the form of establishment	The choice of FDI through a branch or an affiliate is restricted.	Insurance, banking
Prohibition on FDI in certain industries	Foreigners are not permitted to invest in certain industries in India.	Legal services, gambling and casinos, tobacco manufacturing

Source: Compiled by USITC.

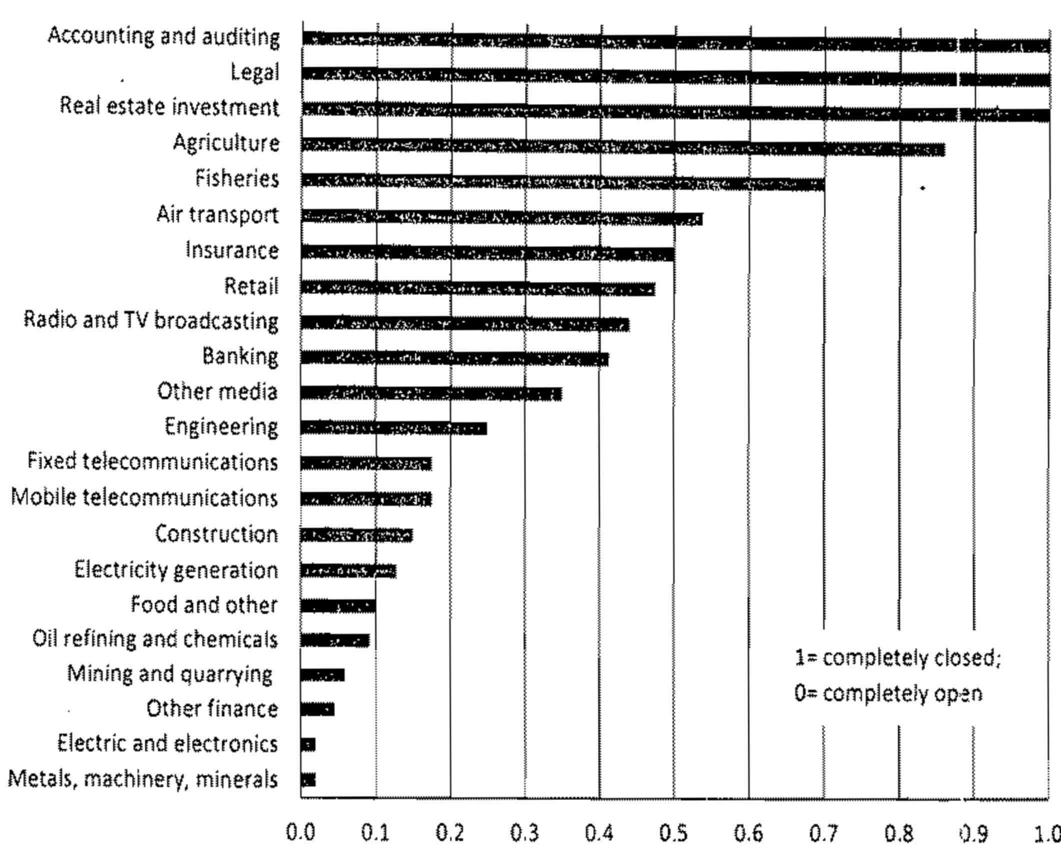
industries; and describes the industry-specific barriers as they exist in 2014.[523] The chapter then presents the results of the Commission's survey of U.S. firms on barriers to FDI.[524]

India's FDI policies can be compared to those of other countries using multicountry indices, compiled by the Organisation for Economic Co-operation and Development (OECD) and the Heritage Foundation, that compare overall FDI restrictiveness. According to the OECD's FDI Regulatory Restrictiveness Index for 2013 (the latest available), India ranks 53rd out of 58 countries listed, with a ranking of 1 being the least restrictive. Many countries on the list are OECD members, whose GDPs per capita are much higher than that of India. India is, however, ranked as less restrictive than both Indonesia and China, two other countries whose GDPs per capita are lower than those of most OECD members.[525]

In India, as in most countries, restrictiveness varies by sector. Accounting and audit services, legal services, and real estate investment are subject to the most restrictive FDI regulations, as measured by the OECD (figure 7.1).

[523] Discussions on a potential U.S.-India bilateral investment treaty (BIT) began in 2008, with the last round held in June 2012. The conclusion of a BIT could change or eliminate some of India's FDI barriers, as identified in this chapter. As of December 2014, however, there were no reports that the negotiations were close to a conclusion. USDOS, Press release, "U.S.-India Joint Fact Sheet: Economic Collaboration," June 24, 2013.
[524] Results from the Commission's CGE analysis on the effects of India's FDI restrictions on the U.S. economy are presented in chapter 3.
[525] Higher scores indicate sectors that have more restrictions. OECD, FDI Regulatory Restrictiveness Index (accessed November 10, 2014). Note that China and Indonesia are also not members of the OECD.

Figure 7.1: OECD FDI Regulatory Restrictiveness Index for India, by sector, 2013



Source: OECD, FDI Regulatory Restrictiveness Index (accessed May 15, 2014).
Note: Forestry, transport equipment, electricity distribution, wholesale, surface and maritime transport, hotels and restaurants, and architecture are listed as open to FDI, with scores of 0 on the index. See appendix Table I.31 for underlying data for this figure.

The Heritage Foundation publishes an Index of Economic Freedom, which ranks 186 countries on various aspects of economic freedom, including freedom to invest. With regard to investment freedom specifically, India ranks 146th out of 184 countries. When compared to its peer group of 47 lower-middle-income countries (as defined by the World Bank), India is ranked 32nd.[526]

Limits on the share of foreign investment in a domestic firm's equity serve as the main conduit through which India imposes FDI restrictions.[527] For most industries in India, caps on foreign investment have remained unchanged over the most recent five-year period (see appendix table H.3). Where equity limits have changed, however, the changes have been in the direction

[526] Higher numbers indicate more restrictions. The 2014 Index relies on data from 2013. Heritage Foundation, 2014 Index of Economic Freedom, "Country Rankings," and "Explore the Data," accessed August 11, 2014.
[527] These caps, however, are not necessarily the most burdensome investment restrictions for U.S. companies. The survey results section describes the relative burden imposed by various investment restrictions in greater detail.

of additional liberalization. In September 2012, the Indian government raised equity caps on FDI in multibrand and single-brand retail, aviation, broadcasting, and power exchanges in order to attract more foreign investment. In September 2013, India eased investment (and procurement) requirements further: it removed the FDI cap in telecommunications, raised the limit in the defense industry to 49 percent (on a case-by-case basis), allowed investors in the oil and natural gas and the courier services sectors to invest through the automatic route,[528] and loosened restrictions on FDI in tea plantations.[529] In August 2014, the government issued new regulations permitting FDI in India's defense industry up to a 49 percent equity cap through the standard government route. Higher equity levels in the defense industry are subject to approval on a case-by-case basis, "wherever it is likely to result in access to modern and 'state-of-art' technology in the country."[530]

Further liberalization may be coming soon. Interviews with industry representatives in India in June and July 2014, shortly following the national election, indicated a widespread belief that the newly elected Modi government would likely raise or eliminate the FDI equity cap in the insurance industry in coming months.[531]

U.S. industry representatives have noted other positive changes to India's investment rules. Aside from the liberalization of FDI equity caps, changes to banking rules have been favorably received by international investors; the changes are expected to facilitate new capital formation. However, not all sectors have benefited by improved FDI rules, even those in which conditions would appear to encourage new investment. For example, rising natural gas and petroleum prices have encouraged new foreign investment in domestic energy exploration and production, creating opportunities both for foreign energy companies and for foreign companies that provide related services. For example, Baker Hughes, Halliburton, Schlumberger, and Transocean are all active in the Indian hydrocarbons industry.[532] However, according to another industry representative, most global major petroleum companies have not pursued large investment projects in India, even though they do not face equity limits. Their concerns include unfavorable or unclear contract terms for upstream oil exploration, and government-controlled prices for downstream petroleum products.[533]

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[528] See the section on India's FDI approval process for a discussion of India's automatic vs. government routes to foreign investment.
[529] Government of India, MOCI, DIPP, "Review of the Policy on Foreign Direct Investment," August 22, 2013; World Bank, "India Development Update," October 2013, 11.
[530] Government of India, MOCI, DIPP, "Review of the Policy of Foreign Direct Investment (FDI) in Defence Sector," August 26, 2014.
[531] Industry representatives, interviews with USITC staff, Mumbai, June 24. 2014, and Bangalore, June 18–20, 2014.
[532] Somers, written testimony to the USITC, February 25, 2014, 7.
[533] Industry representative, interview with USITC staff, Bangalore, June 18, 2014.

Barriers That Apply Across All Industries

A number of limits on FDI in India apply to investors in all industries. These include India's foreign investment approval process; equity limits on foreign ownership by individual companies and on aggregate foreign ownership in Indian public firms; and other limits on the activities of foreign investors.[534]

India's FDI Approval Process

In India, FDI takes place through either the "automatic route" or the "government route." Most investment occurs through the automatic route, under which investors must notify the Reserve Bank of India of new investments within 30 days, but are not required to obtain explicit approval ahead of time. The share of incoming FDI inflows that required explicit government approval dropped from 62 percent in 2001 to 14 percent in 2010, while the proportion entering India through the automatic route increased from 22 percent to 74 percent.[535]

Even when an investment need not be authorized in advance, foreign investors remain responsible for securing any required operating licenses from state and national authorities, and this can be a burdensome process.[536] Investors must obtain seven basic "No Objection Certificates" from Indian government agencies for almost all new investment projects, with others potentially required depending on the project.[537] In December 2012, the Indian government established a special fast-track approval body, called the Cabinet Committee on Investment and led by the Prime Minister, for investments valued at more than $200 million.[538]

Under the government route, for investment in certain defined industries, investors are required to get prior approval from the principal relevant ministry and/or the Foreign Investment Promotion Board (FIPB). The regulations for approval vary by industry, and the approving government agency is either the FIPB (part of the Department of Economic Affairs in the Ministry of Finance) or the Ministry of Commerce and Industry (MOCI), depending on the applicant and the industry.[539]

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[534] Details are presented in appendix table H.2.
[535] Heritage Foundation, "Unleashing the Market in the India," January 2013, 7.
[536] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 17, 2014; U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[537] The seven agencies are the Tree Authority, Storm Water and Drain Department, Sewerage Department, Hydraulic Department, Environmental Department (concerned with debris management), Traffic and Coordination Department, and CFO (fire department clearance). U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[538] U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[539] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 5, 2013, 8 and 29.

Which department of MOCI will approve an investment depends on the type of investment it is. MOCI's Department of Industrial Policy and Promotion (DIPP) oversees investment decisions for FDI in single-brand retail and FDI proposals by nonresident Indians. MOCI's Department of Commerce approves FDI proposals from industrial companies that intend to participate in a Special Economic Zone, which, in exchange for certain tax incentives, requires them to export their entire production of goods and services from India. Most other FDI proposals are approved directly by the FIPB, which is staffed jointly by MOCI and the Ministry of Finance.[540]

Foreign investors may select the location of their projects, but some investors have noted that existing land acquisition laws and zoning regulations have prevented them from setting up factories in their preferred locations.[541] In an effort to address this concern, MOCI has set aside land for 14 national investment and manufacturing zones—integrated industrial townships that offer investors a one-stop approval process for investment, improved infrastructure, prezoned land for industrial use, and other tax benefits.[542]

In discussions with Commission staff, industry representatives stated that the foreign investment approval process through the government route does not usually pose a significant barrier to new investment. Most applications are approved and the process is generally viewed as transparent.[543] However, even though approval is generally granted, delays in the approval process have caused certain problems, particularly in the case of time-sensitive deals relating to the acquisitions of Indian companies, leading some deals to fall through that might otherwise have been completed.[544]

Equity Limits

India imposes foreign investment equity limits (or caps) on foreign investment in a number of specific industries, including retail distribution, defense and aerospace, and insurance. In all sectors for which equity limits apply, there are three cases in which government approval by the FIPB is required: (1) when an Indian company is being established with foreign investment and is not owned by a resident entity; (2) when an Indian company is being established with foreign investment and is not controlled by a resident entity; and/or (3) when the control of an existing Indian company will be transferred to a nonresident entity. The approval requirement applies to FDI, portfolio investment, and other types of foreign investment.[545]

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[540] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 5, 2013, 29.
[541] According to Indian industry representatives, difficulties acquiring land present a significant problem for both domestic and foreign investors. Industry representative, interview with USITC staff, Bangalore, June 20, 2014.
[542] U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[543] Industry representative, interview with USITC staff, Bangalore, June 19, 2014.
[544] Industry representative, interview with USITC staff, Mumbai, June 24, 2014.
[545] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 17, 2014.

Individual foreign portfolio and stock exchange investors are limited to holding less than 10 percent of the capital of an Indian company, with an aggregate limit of 24 percent for all foreign investors. Under certain conditions, the aggregate limit may be raised to the statutory equity cap for the particular industry.[546] FDI in trusts is not permitted. FDI in limited liability partnerships (LLPs) is permitted under certain conditions, in industries where there is no FDI equity cap.[547]

Uncertainty and Lack of Transparency

While U.S. industry representatives report that India is considered an attractive market due to its large population and growing economy, uncertainty and lack of regulatory transparency act as disincentives to investors.[548] In its submission to the Commission, the U.S. pharmaceutical industry stated that the lack of a strong system to protect intellectual property has discouraged FDI into India and will continue to do so, particularly in technologically advanced areas such as research and development (R&D).[549]

Industry representatives have also expressed concern that Indian regulators often do not give industry enough time to comment before carrying out changes to regulations. As one example, the American Insurance Association noted in its submission to the Commission that a popular life insurance product (unit-linked insurance plans) had to be pulled from the market, causing significant confusion and difficulties for consumers, after regulators changed the rules affecting sales of the product. While not necessarily disagreeing with the goals of the new regulations, the submission states that increased notice to industry, and an opportunity to comment before the rules were changed, would have allowed an easier transition with less impact on consumers.[550]

Currency Conversion and Transfer

Access to foreign currency is a key consideration for foreign investors in India. The Indian rupee is fully convertible for current-account transactions,[551] but prior approval from the Reserve Bank of India (RBI) is required to acquire foreign currency above certain limits for specific purposes, including foreign travel, consulting services, and foreign studies. As reported by the U.S. Department of State, other restrictions on currency conversion include the following:

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[546] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 17, 2014.
[547] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 17, 2014, 14–17.
[548] Industry representatives, interviews with USITC staff, Bangalore, June 17 and 19, 2014.
[549] Hunter, written testimony to the USITC, February 25, 2014, 5–6. See chapter 5 for an in-depth discussion of the pharmaceutical industry's intellectual property concerns in India.
[550] Simchak, written testimony to the USITC, February 25, 2014, 6–7.
[551] Current-account transactions include, for example, transactions for the purpose of trade and remittances of profits and dividends.

- Investment by nonresident Indians in real estate may be subject to a "lock-in" period. In addition, investors may not use the proceeds from global depository receipts and American depository receipts abroad for investment in real estate and stock markets. FIPB approval is required in some cases.[552]
- RBI approval is needed to remit the proceeds of sales of assets and to clear payment of income taxes.[553]

Industry representatives interviewed in India generally agreed that such currency restrictions do not pose significant barriers to U.S. firms doing business in India.[554] One foreign exchange control that has been relaxed in recent years allows individuals to transfer up to $200,000 per year abroad for any purpose without approval.[555]

Barriers That Apply to Specific Industries

A number of industry-specific Indian policies act as barriers to U.S. investment. Most prominent among these are equity caps, which particularly affect FDI in the insurance, defense and aerospace, multibrand retail, and telecommunications industries; equity limits in several industries have been decreased over time.[556] In addition, FDI is completely prohibited for certain industries, and other types of restrictions that apply to particular industries may also make FDI more difficult for U.S. investors. Examples include restrictions on the form of establishment in which foreign-owned firms may invest (i.e., branch or affiliate); tax problems, including retroactive taxation and different tax rates in different states; difficulty obtaining a business license; and difficulty acquiring land for business operations. Some of these measures vary by state, as do some of the incentives geared to attracting FDI in particular industries.

Although there is little indication that U.S. investors consider these prohibitions to significantly undermine their business interest, FDI is prohibited in the following industries in India:

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[552] An American Depository Receipt (ADR) is a negotiable certificate issued by a U.S. bank representing a specified number of shares (or one share) in a foreign stock that is traded on a U.S. exchange, denominated in U.S. dollars. The underlying security is held by a U.S. financial institution overseas. ADRs make it easier for foreign investors to trade shares of U.S. companies. Similarly, a Global Depository Receipt (GDR) is a bank certificate issued in more than one country for shares in a foreign company. The shares are held by a foreign branch of an international bank. The shares trade as domestic shares, but are offered for sale globally through the various bank branches. GDRs may be denominated in either U.S. dollars or euros. Investopedia, http://www.investopedia.com/ (accessed December 8, 2014).
[553] U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[554] Industry representatives, interviews with USITC staff, Bangalore, June 20, 2014; Mumbai, June 24 and 26, 2014.
[555] U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[556] Additional detail regarding equity caps in specific industries from 2010 to 2014 is presented in appendix table H.3.

- Lottery businesses, including government and private lotteries and online lotteries;
- Gambling and betting, including casinos;
- Chit funds;[557]
- Nidhi companies;[558]
- Trading in transferable development rights;
- Real estate or construction of farmhouses; and
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.[559]

Certain activities and sectors in India have been closed to investment by both Indian private sector firms and foreign investors. In the past, these sectors included atomic energy and railway transport (other than mass rapid transport systems).[560] In August 2014, however, the government of India amended its FDI regulations to permit both domestic and foreign investment in certain segments of the railway industry.[561] The following sections present additional detail for measures that inhibit FDI in particular industries.

Manufacturing

There are few barriers to investment in India's manufacturing sector. Industry representatives indicate that the Indian government has a strong interest in attracting FDI in the sector, with a focus on increasing employment.[562] The Indian government permits 100 percent FDI equity ownership in most sub-categories of the manufacturing sector. However, wishing to encourage small-scale businesses, the government reserves certain manufacturing sectors for micro and

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[557] Chit funds are non-standardized savings institutions made up of members that make regular contributions into a pool of funds. The pool is periodically distributed to one of the members, who are selected on the basis of previously agreed criteria. These funds are regulated under the Chit Funds Act of 1982 and associated state government regulations. Arthapedia, http://www.arthapedia.in/index.php?title=Chit_Funds_/_Chitty_/_Kuri/_Miscellaneous_Non-banking_Company (accessed August 20, 2014).
[558] A nidhi company is a mutual benefit finance company that lends money to members, primarily using the pooled funds of its members as lending capital. Nidhis are registered under the Companies Act of 1956 and regulated by India's Ministry of Corporate Affairs. Nidhis are also included in the definition of non-banking financial companies (NBFCs) as included in the Consolidated Investment Policy. Arthapedia, http://www.arthapedia.in/index.php?title=Nidhi(Mutual_Benefit_Society (accessed August 20, 2014).
[559] Government of India, *Consolidated FDI Policy*, April 2014, 39.
[560] Ibid.
[561] FDI will be permitted up to 100 percent equity through the automatic route in construction, operation, and maintenance of railway infrastructure, including passenger and freight railway lines, rolling stock, railway electrification and signaling, rail terminals, and related infrastructure. Under previous rules, FDI was permitted in mass rapid-transport systems, and that industry segment remains open. Proposals involving FDI greater than 49 percent in security-sensitive areas will be approved by the Ministry of Railways on a case-by-case basis. Government of India, "Policy for Private Investment in Rail Infrastructure," August 27, 2014.
[562] Industry representatives, interviews with USITC staff, Bangalore, June 20, 2014; Mumbai, June 25, 2014; and New Delhi, June 23, 2014.

small enterprises (MSEs), defined as companies with less than $1 million in plant and machinery. FDI by investors that do not qualify as MSEs and wish to manufacture items reserved for the MSE sector must be authorized by the FIPB via the government investment route if the foreign equity share will be over 24 percent. At its peak in the late 1990s, more than 800 industry categories were protected under the small-scale industry policy.[563] Since 1997, the number of protected categories has steadily decreased.[564]

Defense and Civil Aerospace

Until October 2013, India imposed a 26 percent equity limit on FDI in the defense and aerospace industries. In 2013, the government announced that it would raise the equity limit to 49 percent, subject to approval on a case-by-case basis. As of July 2014, however, no foreign investor had applied to invest at the higher level. According to industry representatives, defense companies are particularly concerned about safeguarding their intellectual property, and most are not interested in investing in India or elsewhere if they can have only a minority equity share. The number of potential joint venture partners among Indian firms is also limited, partly due to the financial requirements of a 74 percent equity stake.[565]

Industry representatives speculate that raising the equity limit would expand the number of potential partners.[566] In addition, industry sources note that new aviation platforms generally require a global customer base to justify their costs, so investors producing in India would need to be able to export to justify the business case.[567] As of June 2014, many observers expected that the equity cap would soon be lifted, either entirely or to the point that foreign investors could hold a majority share in their investments.[568]

Aside from the equity limit, the defense industry barrier most frequently cited by industry representatives is the Defence Offset Policy. This policy was formalized as part of India's Defence Procurement Procedure beginning in 2005, but existed informally before that time.[569] The offset program, which applies to both defense and civil aerospace contracts, is an effort by the Indian government to promote local production in the industry. Under the policy, 30–50 percent of major defense contracts must be offset through local production.

[563] As of 2010 (latest available), the list included 20 specific industries within food processing, wood and paper processing, chemicals, glass and ceramics, and mechanically engineered items. The list is available at http://www.dcmsme.gov.in/publications/reserveditems/reserved2010.pdf.
[564] U.S. Department of State, "2013 Investment Climate Statement—India," February 2013.
[565] Industry representative, interview with USITC staff, Bangalore, June 17, 2014.
[566] Industry representatives, interviews with USITC staff, Bangalore, June 17 and 19, 2014.
[567] AmCham India, "Addressing Key Challenges," April 2014, 32.
[568] Industry representatives, interviews with USITC staff, Bangalore, June 17 and 19, 2014, and Mumbai, June 24, 2014.
[569] Industry representative, interview with USITC staff, Bangalore, June 17, 2014.

Foreign companies can choose one of the following routes to fulfill offset obligations:

- Direct purchase of eligible products, components, or services from Indian industries;
- FDI in Indian defense industries, including joint ventures and co-production of defense products and components. Investments into small and medium enterprises count for one and one-half times as much as FDI in larger companies. Beginning in 2012, technology transfers to a local partner were added to the FDI list, with a potential 10 percent offset multiplier available on them;
- FDI in government-approved research and development projects (recently expanded beyond defense R&D only).[570]

A recent example of the application of the offset policy is India's Medium Multi-role Combat Aircraft project, under which India will purchase 126 fighter aircraft from Dassault (France). According to different sources, Dassault will build either the first 10 or the first 16 aircraft in France, and the remainder will be produced in India in a joint venture with Hindustan Aeronautics Ltd. (HAL), India's government-owned defense company.[571]

As of January 2013, India requires a 30 percent offset on any deal over Rs 3 billion (about $55 million). Large procurements carry larger offset obligations, up to 50 percent.[572] Observers cite numerous problems with the offset policy, including conflicting government policies, regulatory procedures that are unclear or contradictory, an inefficient managing body, and poor execution. Others have noted that long delays in completing many defense projects have at times led to unworkable offset contracts; when foreign companies were unable to fulfill offset requirements due to changing conditions, they had to conduct lengthy contract renegotiations.[573] A 2012 Indian government audit of the defense offset program largely substantiated many of these concerns.[574] However, according to Boeing's 2014 submission to the Commission, India's efforts at defense indigenization have not had a significant effect on Boeing's business there, although the company continues to closely monitor developments.[575]

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[570] Spear, "The Implementation of India's Defense Offset Policy," January 31, 2013; industry representative, interview with USITC staff, Bangalore, June 17, 2014.
[571] AmCham India, "Addressing Key Challenges," April 2014, 30; industry representative, interview with USITC staff, Mumbai, June 24, 2014.
[572] Spear, "The Implementation of India's Defense Offset Policy," January 31, 2013; CII, "Indian Defence Offset Policy," n.d. (accessed October 27, 2014).
[573] AmCham India, "Addressing Key Challenges," April 2014, 30–31; industry representatives, interviews with USITC staff, Bangalore, June 17 and 19, 2014.
[574] The audited cases were from 2010–12. Government of India, Union Government (Defence Services) Air Force and Navy, "Report No. 17 of 2012–13," (accessed October 27, 2014).
[575] Boeing Corporation, written submission to the USITC, February 7, 2014, 3–4. Boeing participates in both the defense and the civil aerospace industries in India.

Despite these policies, India represents a particularly attractive market for defense and aerospace companies, including many firms that overlap the two industries. India accounted for 12 percent of global arms imports between 2008 and 2012, and imports about 70 percent of its defense requirements. India is also one of the few large countries expected to significantly build up its defense capacity in coming years, with anticipated spending of $100 billion on defense and aerospace by 2023, according to an estimate by the state of Karnataka.[576] According to industry representatives, many foreign defense companies believe that they cannot afford to bypass the Indian market.[577] Expansion is also likely in the civil aerospace industry. India's civil aircraft fleet is significantly smaller on a per capita basis than that of most other countries, with only about 350 aircraft, compared with about 7,000 in the United States. This disparity indicates significant room for growth as India's middle class continues to expand.[578] The state of Karnataka expects the Indian aviation market to rank among the top three markets globally by 2017.[579]

Air Transport Services

According to India's latest 2014 consolidated FDI policy report, for domestic scheduled passenger and air transport services, as well as non-scheduled air transport services, foreign equity is capped at 49 percent via the automatic route, and allowed to rise to 74 percent with government approval. Industry representatives have noted that the regulations concerning cargo versus passenger airlines are unclear, particularly in regard to foreign investment in existing Indian-owned airlines. This poses a particular challenge for international carriers who are prohibited by India's current cabotage law from shipping cargo between multiple destinations within India.[580] There are no FDI restrictions in place for helicopter and seaplane services.[581]

Telecommunications

In an effort to attract foreign investment targeted towards infrastructure improvement, in 2000 the Indian government relaxed the telecommunications equity cap for foreign firms that also

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[576] Government of Karnataka, *Karnataka Aerospace Policy, 2013–23*, January 2013, 1.

[577] India is expected to spend in the range of $150–$170 billion to upgrade its military over the next 20 years, with about $65 billion expected to go to the aerospace sector. In particular, one industry representative mentioned that big contracts for new fighter planes are expected within the next five years, and another expected a buildup of naval capacity soon after. Industry representatives, interviews with USITC staff, Bangalore, June 17, 2014, and Mumbai, June 24, 2014.

[578] Industry representative, interview with USITC staff, Bangalore, June 17, 2014.

[579] Government of Karnataka, *Karnataka Aerospace Policy, 2013–23*, January 2013, 1.

[580] The ability to invest in an existing Indian airline would allow international air freight carriers to use a domestic service provider to ship to multiple hubs within India. Industry representative, interview with USITC staff, Washington DC, August 1, 2014.

[581] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, April 17, 2014.

agree to build infrastructure (laying cable for broadband Internet access or constructing cell towers for wireless).[582] Those firms are allowed to maintain 100 percent ownership of their Indian affiliates for five years before divesting a 26 percent equity stake to the Indian public, bringing their total back to 74 percent (table 7.2).[583]

Table 7.2: FDI-related policies affecting telecommunications

Sector/Activity	FDI/Equity cap	Investment route	Notes
Basic and cellular	49%/74%	Automatic/FIPB	
Internet service provider	49%/74%	Automatic/FIPB	
Infrastructure provider (dark fiber, tower, etc.)	49%/100%	Automatic/FIPB	Must divest 26% of equity in favor of Indian public
Email/voice mail	49%/100%	Automatic/FIPB	Must divest 26% of equity in favor of Indian public

Source: EIU, *India Country Commerce Report*, 2012; USTR, *2013 National Trade Estimate*, 2013.

For companies that do not build infrastructure, the government maintains equity caps of 49 percent and 74 percent for wireless telecommunications and Internet service providers under the automatic and government routes, respectively.[584] The government of India also maintains restrictions on foreign investment in direct-to-home satellite broadcasting. Foreign satellite operators are required to sell satellite capacity to the Indian Space Research Organization, which then resells that capacity to Indian firms (table 7.3).[585]

Table 7.3: Nontariff measures affecting FDI in telecommunications

Sector/Activity	Policy	Notes
Mobile/fixed telecoms	Limit on number of licenses	4 per service area
Mobile/fixed telecoms	License	Requires different licenses for international and domestic long distance services
Satellite	Restriction of service in Ku-Band[a]	
Satellite	Prohibition on provision of direct-to-home services	Must sell capacity to the Indian Space Research Organization for resale to an Indian firm

Source: USTR, Section 1377 Review, 2013; World Bank, Services Trade Restrictions Database (accessed October 27, 2014).
[a] The Ku-Band is the 12-18 GHz portion of the electromagnetic spectrum commonly used to broadcast television by satellites.

According to the trade press, the Indian telecommunications market is highly attractive, particularly for Internet service providers (ISPs) and wireless services. The telecommunications sector in India has rapidly changed—and is continuing to do so. In contrast to the more mature markets in the United States and Europe, India is still increasing tele-density and moving

[582] EIU, *2012 India Country Commerce Report*, 2012.
[583] USTR, *2013 National Trade Estimate*, 2013.
[584] EIU, *2012 India Country Commerce Report*, 2012.
[585] World Bank, Services Trade Restrictions Database (accessed October 22, 2013).

towards expanded access to broadband in more rural areas still largely reliant on dial-up Internet connections. The Indian market represents an opportunity for telecommunications providers to greatly expand their subscriber base, boost total revenue, and sharply increase the average revenue per user by introducing new, more sophisticated technologies and services.[586] However, this potential faces significant constraints related to India's network infrastructure, particularly in terms of average revenue per user. The vast majority of Indian Internet connections still operate through dial-up, and wireless networks continue to operate under GSM (Global System for Mobile Communications) standards, which cover only second-generation (2G) networks.[587]

Financial Services

Industry representatives report that the investment environment for Indian financial services is complex, but note that several U.S. banks have been providing services in India for more than 50 years.[588] While the level of foreign investment in this industry is still largely set by FDI caps, the market remains attractive to many investors. Based on the Commission survey, among U.S. financial services companies with at least a 10 percent equity stake in an Indian affiliate, only 31 percent face difficulty getting required approvals or licenses. Further, between 2007 and 2013, U.S. companies in the financial services industry, on average, encountered fewer trade issues in the Indian market than did other industries, such as the "other manufacturing" and information and communications technology (ICT) sectors. According to U.S. industry representatives, investment caps and other investment-related barriers, while cumbersome, do not substantially restrict financial services firms' long-term investment strategies in India. Examples of other investment-related barriers include restrictions on incorporating branches and priority-sector lending requirements.[589]

Insurance

Since the establishment of India's Insurance Regulatory and Development Authority (IRDA) in 2000, the share of foreign investment in the Indian life insurance and general insurance markets has been capped at 26 percent.[590] Wholly foreign-owned branches are also prohibited, so foreign insurers must enter into joint ventures with Indian firms to access the market. Reinsurers are similarly prohibited from operating branch offices in India, and the government-

[586] IBISWorld, *Global Wireless Telecommunications Carriers*, April 2014.
[587] Networks that allow more data-intensive uses, such as 3G and 4G networks, are common in developing countries.
[588] Industry representatives, interviews with USITC staff, Mumbai, June 24, 2014, and New Delhi, June 26, 2014.
[589] See table 7.5 for more information on priority-sector lending requirements. Industry representatives, interviews with USITC staff, Mumbai, June 26, 2014, and New Delhi, June 26, 2014.
[590] Before 2000, India's insurance industry was a government-owned monopoly. Government of India, IRDA, "History of Insurance in India," December 2007.

owned General Insurance Corporation (GIC Re) remains the sole reinsurer in India.[591] At the same time, the government-owned Life Insurance Corporation (LIC) maintains a domestic market share over 70 percent, according to IRDA's 2012 annual report.[592]

In 2008, legislation was introduced that proposed to raise the foreign equity limit in the insurance industry to 49 percent, and to permit foreign reinsurers to open independent branches. More recently, the Indian government has considered different types of liberalization in the sector.[593] As of September 2014, however, changes remain pending in the Indian parliament. With the installation of the Modi government in May 2014, many observers expect further liberalization in the Indian insurance sector.[594] Nonetheless, while several industry bodies are confident that the Modi government will raise the FDI cap to 49 percent within its first year,[595] the new FDI ceiling is expected to be coupled with additional restrictions on management voting rights and control.[596]

Banking

Foreign banks have operated in India since the 19th-century colonial period. Following the recommendations of the 1991 Narasimhan Committee, banking reforms launched an era of change that has opened India's banking market to new foreign entrants.[597] However, India maintains FDI limits in the banking sector, along with several other non-FDI barriers that weigh heavily on an individual firm's decision to invest. Foreign banks are subject to an equity cap of 49 percent in Indian banks through the automatic route and an equity cap of 74 percent with approval from the Reserve Bank of India (RBI). Asset reconstruction firms[598] are allowed up to 100 percent FDI. Foreign investment in commodity exchanges and finance companies that specialize in financing infrastructure projects are both capped at 49 percent, with the latter limited to 23 percent for foreign institutional investors (FIIs) and 26 percent for FDI.[599] Foreign

[591] Simchak, written testimony to the USITC, Washington, DC, February 2, 2014.
[592] IRDA, "Annual Report 2012-13," October 2013, 21.
[593] Simchak, written testimony to the USITC, February 25, 2014, 6–7.
[594] Chatterjee and Tripathy, "India to Raise Foreign Investment Limit," July 10, 2014; industry representative, interview with USITC staff, Mumbai, June 24, 2014.
[595] Industry representatives, interviews with USITC staff, Mumbai, June 24, 2014, and June 26, 2014.
[596] Tuli & Co., "49% Foreign Direct Investment in Insurance—Finally?" July 22, 2014.
[597] Kashyap and Kumar, *Foreign Banks in India: At an Inflection*, November 2013.
[598] Asset reconstruction companies are in the business of resolving non-performing assets, such as bad loans, upon acquisition from Indian banks and financial institutions. According to an Indian asset reconstruction firm, the Indian industry has "country-specific unique features; emulating international experience is therefore not an option for Indian Asset Reconstruction Companies." Arcil website, http://www.arcil.co.in/about-us/ (accessed December 8, 2014).
[599] FIIs, which generally invest under the portfolio investment scheme, are limited to holding no more than 10 percent equity of a particular company. This barrier is an aggregate limit on equity held by such investors. Government of India, *Consolidated FDI Policy*, April 2013, 13.

banks may invest in India's state-owned banks, but that investment is capped at an aggregate of 20 percent (table 7.4).

Table 7.4: FDI limits on banking

Type of investment	Equity cap	Route	Notes
Asset reconstruction companies	100%	Government	10% or more, subject to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002
Commodity exchanges	49%	Government	Limit of 23% for FIIs under the portfolio investment route Limit of 26% under the FDI route Limit of 5% for nonresident investor/entity
Infrastructure companies	49%	Government	Limit of 23% for FIIs and 26% for FDI
Banking	49%/74%	Automatic/RBI	Applications for a banking license are based on individual application assessments
Public sector bank	20%	Government	

Sources: USITC Services Nontariff Measure Database (accessed September 10, 2014).

Aside from the equity limits on bank ownership in India, the government imposes several other restrictions that may impact the decision of foreign banks to invest in the Indian market. First, like all countries, India requires banks either to obtain a banking license or to register with the RBI as a non-banking financial company (NBFC).[600] Financial firms registered as NBFCs may engage only in the particular business line for which their license was issued; for instance, corporate lending or foreign exchange services, but not both.[601]

A banking license in India is universal, giving the holder the authority to offer the full suite of banking services throughout India, as well as access to the Deposit Insurance and Credit Guarantee Corporation.[602] Most foreign banking activity in India is through the NBFC route, often with interlocking independent NBFC entities under a single corporate conglomerate. For instance, American Express Bank and Barclay's Bank both surrendered their banking licenses to focus on NBFC activities.[603] Industry representatives report that NBFC regulations are less burdensome than the service obligations required by banking regulations, even taking into account capital requirements of $500,000–$50 million that increase with the share of foreign equity ownership.

Foreign banking representatives, including U.S.-owned banks, indicate that they are not interested in expanding or maintaining their retail banking presence in India due to the burden of service obligations, which include both Priority Sector Lending (PSL) requirements and

[600] Shakya, "Regulation of Non-banking Financial Companies in India," 2014.
[601] Kashyap and Kumar, *Foreign Banks in India: At an Inflection*, November 2013.
[602] Ibid.
[603] Ibid.

service obligations to unbanked populations (table 7.5).[604] Further detail is provided in chapter 8. In 2013, India passed a new Banking Laws Bill that allows for new banking licenses that would ease some of the burdens;[605] however, as of September 2014, that legislation has yet to be implemented.[606]

Table 7.5: Non-equity cap barriers in banking with substantial FDI effects

Measure	Details
Legal form of establishment	Limited to wholly owned subsidiaries
License limitation	If a bank's assets are more than 15% of total Indian banking assets, new licenses may be denied. May limit capital infusion into or expansion of wholly owned subsidiaries if assets are more than 25% of total Indian banking assets.
Directed lending to priority sectors	For wholly owned subsidiaries: 40% of lending must go to priority sectors (18% to agriculture, 10% to other priority sectors). For branches: 32% lending must go to priority sectors (10% to small industry, 12% towards exports).
Nationality requirement for directors	A majority of a bank's board of directors should be in-country Indian nationals. All directors must meet the Reserve Bank of India's "Fit and Proper" standard.
Heavy state involvement	28 government-owned banks control roughly 72% of commercial banking assets.
Branch establishment quota	Foreign banks are limited to establishing only 12 branches in a given year, and are required to meet a $25 million capital requirement before opening their first branch.

Sources: USITC Nontariff Measures Database.

The Pension Fund Regulatory and Development Authority (PFRDA) Bill, passed by the Parliament in September 2013, allows foreigners to invest in Indian pension fund companies for the first time. The law grants statutory status to the PFRDA, which is expected to lead to improvements in the quality of available pension products and services. The National Pension Service is mandatory for all central government employees and voluntary for all other employed citizens. The law amends the existing National Pension Service system to allow up to 26 percent foreign investment in the pension sector. (This cap may rise to 49 percent, in line with the insurance threshold, if the equity limit for FDI in insurance is raised.) If higher levels of foreign equity are permitted in the pension sector, the change is expected to widen the set of available pension products, plans, and fund management companies. The law also specifies

[604] Industry representative, interview with USITC staff, Mumbai, June 26, 2014.
[605] World Bank, "India Development Update," October 2013, 9.
[606] Industry representative, interview with USITC staff, Mumbai, June 26, 2014.

rules that would allow foreign companies to invest in reinsurance[607] companies for the first time.[608]

Professional Services

In professional services, statutory restrictions that bar foreign practitioners from the domestic market, rather than equity caps on foreign investment, have a larger impact on affiliate trade in these industries. Foreign firms that provide accounting, engineering, or architectural services are not restricted by an investment ceiling in the Indian market, though they do face other barriers to their operations, as described in chapter 8.[609] In contrast, FDI is strictly prohibited in the legal industry, and foreign law firms are barred from entry under the 1961 Advocacy Act.[610] For other professional services, foreign multinationals can establish an affiliate that is distinct and operates independently from the parent, similar to a franchise.

Legal Services

The Indian legal industry remains heavily regulated by the 1961 Advocacy Act. In addition, in 2009 the Bombay High Court issued an outright ban on foreign attorneys and law firms providing affiliate litigation or consultative services in India.[611] Because foreign law firms cannot provide services in India, many establish satellite offices offshore in Dubai, Singapore, or Nepal. To deal with their clients' cross-border legal issues, these offices set up India desks that are generally staffed by a combination of foreign and Indian attorneys.[612]

Accounting Services

Since the Chartered Accountants Act became law in 1949, the Institute of Chartered Accountants of India (ICAI) has overseen and regulated the industry. This law prohibits foreign firms from providing auditing and assurance services in India without permission from the ICAI.[613] It also requires that all firms, foreign or domestic, that provide audit or assurance services be registered with the ICAI. Foreigners may establish a partnership or liaison office with an Indian firm, or they may set up a sole proprietorship. Since the 1990s, several global accounting firms (Ernst & Young, KPMG, PricewaterhouseCoopers, and Deloitte) have either

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[607] Reinsurance companies sell insurance to primary insurance companies.

[608] The FDI equity cap is found in chapter 5, section 24 of the act. Government of India, "The Pension Fund Regulatory and Development Authority Act," 2013, http://indiacode.nic.in/acts-in-pdf/232013.pdf; World Bank, "India Development Update," October 2013, 10.

[609] OECD STRI regulatory database (accessed August 11, 2014); industry representative, interviews with USITC staff, Washington, DC, May 1, 2014, and May 27, 2014.

[610] OECD STRI regulatory database (accessed August 11, 2014); industry representative, interview with USITC staff, Washington, DC, April 10, 2014.

[611] Krishnan, "Globetrotting Law Firms," 2010.

[612] Industry representative, interview with USITC staff, Washington, DC, April 10, 2014.

[613] Singh, "No Fronts for Global Accounting Firms," January 23, 2009.

established local offices or partnered with third-party service providers in India to legally offer management consultancy services.[614]

Some domestic Indian accounting firms have alleged that foreign companies have violated the Chartered Accountants Act via a liberal interpretation of management consultancy services, which have allegedly expanded into accounting, auditing, and taxation services. Their concerns were brought to the attention of the high courts in August 2012 in a public-interest itigation petition.[615] Changes introduced in the Companies Act of 2013 also may pose new compliance challenges for foreign auditors, mandating firms to rotate auditors based on a statutory term of five consecutive years and limiting the number of audits a single partner can sign.[616] However, these measures apply to foreign and domestic firms equally; as of November 2014, it was unclear as to how these new regulations were affecting foreign investment in the industry.

Education Services

India's laws governing FDI in education have significantly evolved since 2000. In that year, the government issued "Press Note 2 (2000)" permitting 100 percent foreign direct investment in this sector.[617] Existing regulations already required foreign educational institutions to set up as nonprofit entities, such as a trust or society.[618] However, according to India's consolidated FDI policy, foreign investment is prohibited in trusts that do not qualify as venture capital funds.[619] As a result, until 2013, foreign institutions chose to partner with a local university or college to offer their courses and curricula in India. However, following an executive order issued on September 10, 2013 (Opening of Campuses by Foreign Universities), foreign educational institutions will now be permitted to operate as independent branch campuses and award foreign degrees based on a new set of rules (Establishment and Operations of Campuses of Foreign Educational Institutions) proposed under the University Grants Commission Act of 1956.[620] Graduates of these institutions would still need to have their degrees recognized by

[614] *Hindu*, "High Court Notice," August 24, 2012.
[615] Ibid.
[616] If the auditor is an audit firm, the statutory period is extended to no more than two terms of five consecutive years. EY, "India Inc.—Companies Act 2013," September 2, 2013; industry representative, interview with USITC staff, Washington, DC, May 27, 2014.
[617] Government of India, MOCI, DIPP, "Expansion of List of Industries/Activities Eligible for Automatic Route for Foreign Direct Investment (FDI), Non Resident Indian (NRI) and Overseas Corporate Body (OCB) investment," February 11, 2000; Raja et al , "PE Investment in Indian Education through the FDI Route," November 1, 2011.
[618] Marg Swarnabhoomi, "Education Scenario in India," n.d.
[619] Government of India, MOCI, DIPP, *Consolidated FDI Policy*, October 1, 2011.
[620] Government of India, Ministry of Human Resource Development, "Opening of Campuses by Foreign Universities," September 10, 2013. The press release is effectively an executive order which does not need to be approved by Parliament. An official notification of the rules will be published once the law ministry has vetted the proposal.

the Association of Indian Universities to continue on to advanced degrees or to pursue government employment.[621]

Notwithstanding the new regulation, the government of India still requires foreign education providers to register as nonprofit entities under Section 25 of the Companies Act of 1956. Under Section 25, nonprofit entities may receive FDI but are restricted from profit distribution, meaning that foreign universities cannot repatriate any money earned.[622] Opinions vary whether foreign universities, particularly for-profit institutions, will consider these remaining conditions to be a substantial deterrent to investment.[623]

Executive education programs and global research centers are a segment of the market that has yet to be regulated, making it increasingly attractive to foreign education providers. Recognizing the market potential of a growing population and the government's commitment to industrial expansion, globally recognized institutions, including the University of Chicago and Virginia Tech, have recently established research centers in New Delhi and Chennai. These facilities generally take the form of academic collaborations with local universities, which is currently a cost-effective option.[624]

Retail Trade

India has historically been a closed market for foreign retailers. The first opening to FDI occurred in 2006, when FDI of up to 51 percent was permitted in single-brand retail.[625] In November 2011, the Indian government began a new phase of significant, though restrained, liberalization of FDI restrictions in this sector. The government increased the FDI cap for single-brand retailing from 51 percent to 100 percent, requiring FIPB approval for ownership of greater than 51 percent, with the caveat that 30 percent of products must be sourced from Indian small and medium-sized enterprises (SMEs) once the investment crosses that threshold.[626]

In September 2012, the government liberalized the highly sensitive multibrand retailing sector, allowing foreign investment of up to 51 percent. However, the government attached significant conditions to any FDI in multibrand retail. A minimum investment of $100 million is required,

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[621] Mishra, "India Moves Ahead with Plans to Allow," September 25, 2013.
[622] Nanda, "Foreign Universities Open India Centres," April 7, 2014.
[623] Mishra, "India Moves Ahead with Plans to Allow," September 25, 2013.
[624] Anand, "Foreign Universities Might Not Rush to India," September 18, 2013.
[625] Chari and Madhav Raghavan, "Foreign Direct Investment in India's Retail Bazaar," 2012. Single-brand retail stores sell merchandise from only one brand, such as a single shoe manufacturer. Multibrand stores, like department stores or grocery stores in the United States, sell merchandise from many different brands.
[626] USTR, *2013 National Trade Estimate*, 2013.

with at least half dedicated to "back-end" infrastructure,[627] and stores are allowed only in cities with a population of at least 1 million people. The government also suggested that multibrand retail companies source 30 percent of their merchandise from Indian small enterprises.[628] In addition, individual Indian states must affirmatively allow investment in multibrand retailing.[629] The same policy change revised the local-sourcing requirement for FDI in single-brand retailing to include all Indian firms, not just SMEs.[630]

Additionally, the government requires retailing firms with foreign investment to seek approval before adding a new product or product category, a requirement that Indian firms need not comply with.[631] Since India opened its multibrand retail sector to FDI in 2012, Tesco (United Kingdom) has been the only international retailer to enter the market, with its purchase of a 50 percent stake in India's Trent Hypermarket Ltd.[632]

In other areas of the retail sector, India allows foreign investment in business-to-business (B2B) e-commerce, but no foreign investment in business-to-consumer (B2C) e-commerce (box 7.1). Similarly, the Indian government allows 100 percent FDI in cash-and-carry wholesale trading.[633] Foreign-owned direct selling companies, such as Amway, have faced restrictions from the Prize Chits and Money Circulation Schemes (Banning) Act of 1978. The legislation intends to prevent fraud (Ponzi schemes) but is vague; interpretation and enforcement have been left to states, which have varying interpretations. In 2006, an Indian state raided and seized property of a U.S. direct selling company that was operating in India with the approval of the FIPB.[634]

Case Study: Amazon in India—The Intersection of Retail, Wholesale, and E-Commerce

E-commerce in India is a rapidly growing sector. Increases in Internet and smartphone penetration have connected more Indians with online retailers as consumer comfort with

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[627] Back-end infrastructure investment is any capital expenditure not related to front-end units, including investment in processing, manufacturing, distribution, logistics, and storage. Government of India, "Review of the Policy on Foreign Direct Investment Allowing FDI," 2012.

[628] Small enterprises are defined as Indian firms with less than $1 million in total investment in plant and machinery. Government of India, "Review of the Policy on Foreign Direct Investment Allowing FDI," 2012.

[629] As of September 2013, multibrand retailing is allowed in the states of Andhra Pradesh, Assam, New Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, and the Union Territories (Daman and Diu, and Dadra and Nagar Haveli). Government of India, "Review of the Policy on Foreign Direct Investment in the Multi Brand Retail," 2013.

[630] USTR, *2012 National Trade Estimate*, 2013.

[631] World Bank, Services Trade Restrictions Database.

[632] PTI, "Trent Q1 Profit Jumps 3.5-fold to Rs 61.11 cr," August 7, 2014.

[633] Government of India, "Review of the Policy on Foreign Direct Investment Allowing FDI," 2012.

[634] USTR, *2013 National Trade Estimate*, 2013.

purchasing online has increased with exposure. While significantly smaller than other regional e-commerce markets—India's e-commerce market is worth approximately $3 billion,[635] while China's is worth approximately $300 billion[636]—the market is quickly attracting significant investment and is projected to grow by an order of magnitude to over $30 billion by 2020.[637]

Indian FDI policies complicate the landscape for foreign owned e-commerce giants like Amazon.com. As mentioned in this chapter, India currently does not allow foreign investment in business-to-consumer (B2C) e-commerce, though that policy may change under the new Modi government. Foreign investment is also capped at 51 percent in multibrand retailing. However, 100 percent foreign investment is allowed in single-brand retailing and business-to-business (B2B) e-commerce.

These complex investment caps have required Amazon to structure its activities in a commensurately complex way. First, to operate in the B2C e-commerce market, Amazon's website serves as an online marketplace for other retailers to sell their wares.[638] Companies store their products in Amazon warehouses, but ownership of the actual product never transfers to Amazon; instead, the retailer pays Amazon a fee for the storage and distribution of its products and for access to Amazon's website as a selling platform.

Amazon also engages in single-brand retailing in India selling Amazon-branded products, with the Kindle being the most visible example. Amazon launched the Kindle Paperwhite in India in June 2013 by making it available for purchase in several Indian brick-and-mortar retailers, including Croma and Reliance Digital, among others.[639] In order not to violate the prohibition on B2C e-commerce, Amazon-branded e-readers offered through the Amazon.in website are actually sold by Indian retail firms[640] and fulfilled by Amazon, meaning that an Indian retailer buys a Kindle, then pays Amazon a fee to sell an Amazon product on the Amazon website, while Amazon is also responsible for the storage and distribution of the Kindle at one of its warehouses.

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[635] Srivas, "Lines in the e-Commerce Sand," August 3, 2104.
[636] Campbell, "Will Amazon.com, Inc. (AMZN)'s $2 Billion India Bet Play Out?" August 4, 2014.
[637] Bellman and Thoppil, "Amazon Ups the Ante in India," July 30, 2014.
[638] Soni and Mookerji, "E-commerce: Foreign Brands Seek Clarity on Eligibility," July 15, 2014.
[639] Saxena, "Amazon Launches Kindle Paperwhite Ebook Reader," June 13, 2013.
[640] Amazon.in, accessed by USITC staff August 5, 2014. The website indicates that an Amazon Kindle Paperwhite bought through the website is sold by Infiniti Retail, Ltd., which owns and operates Croma, one of the brick-and mortar-retailers that sells Kindles.

Difficulties aside, Amazon appears committed to the Indian market. It recently announced a $2 billion investment in India, with Amazon CEO Jeff Bezos saying: "We see huge potential in the Indian economy and for the growth of e-commerce in India."[641]

Survey Results Related to FDI Barriers

The Commission's survey of U.S. companies identified seven potential barriers that principally impact FDI (table 7.6). U.S. companies identified the barriers they faced and how severely each barrier affected the company. Companies reported on barriers separately for their affiliates that sell goods in India and for those that provide services; the structure of this part of the chapter follows that distinction.[642]

Table 7.6: FDI-related barriers identified in the Commission survey

FDI barriers
Difficulty getting required permits, approvals, or licenses for investment from the Indian government
Restrictions on the share of an investment in India that can be owned by a foreign company, or requirements to enter into a joint venture with an Indian company
Policies other than equity caps (including limits on juridical form, ability to apply for a license, limits on number of licenses) that restrict investment[b]
Requirements that a share of goods produced by an Indian affiliate be exported[a]
Requirements that investments must be of a minimum amount in order to obtain approval
Limits on geographic expansion with India[b]
Restrictions on buying or using land[a]

Source: Commission survey.
[a] Applies only to companies reporting sales of goods through Indian affiliates.
[b] Applies only to companies reporting cross-border services exports or sales of services through Indian affiliates.

Effects of Barriers on Companies with Affiliate Sales of Goods

During 2007–13, an estimated 9.3 percent of U.S. firms engaged in India sold goods through a foreign affiliate in the Indian market. The following section analyzes the effect of these barriers, as encountered by U.S. companies with affiliate sales of goods in India, and the differences by industry.[643]

[641] Bellman and Thoppil, "Amazon Ups the Ante in India," July 30, 2014 (quoting Jeff Bezos).
[642] Some companies had affiliate sales of both goods and services, so they answered both sections of the survey.
[643] In the survey, companies reported the sector that accounted for the highest percentage of revenue for their entire organization, but did not report the sector from which their individual affiliates in India predominantly derived their revenue. For this reason, companies in goods industries may report facing barriers to the provision of services, and companies primarily involved in providing services may also face barriers to goods production.

Barriers over Time

From a list of five potential barriers related to foreign investment, the FDI-related barrier most frequently faced by companies with affiliate sales of goods in India (22.4 percent) is "difficulty getting required permits, approvals, or licenses for investment" (table 7.7). According to the

Table 7.7: Effects of investment policies on U.S. companies that have foreign affiliate sales of goods in India, by policy type, 2007–13

	Share of companies (%)		Mean effect[a]		
Policy issue	Facing the issue[b]	Substantially affected[c]	2007	2010	2013
Difficulty getting required permits, approvals, or licenses for investment	22.4	15.5	2.2	2.5	2.9
Requirement that a share of goods produced be exported	5.9	1.6	1.4	1.5	1.5
Restrictions on share of investment (equity cap) or joint venture requirement	11.7	7.1	2.0	3.0	2.4
Requirement for minimum investment amount	3.1	0.8	1.6	1.6	1.8
Restrictions on buying or using land	9.3	5.4	1.6	2.7	2.7

Source: USITC calculations of weighted responses to the Commission questionnaire (question 4.2).

[a] On a scale from 0 (did not face the barrier) to 5 (prohibitive effect on activities).

[b] Share of companies reporting an effect from 1 (faced the policy but it had no effect on activities) to 5 (prohibitive effect) in 2007, 2010, or 2013.

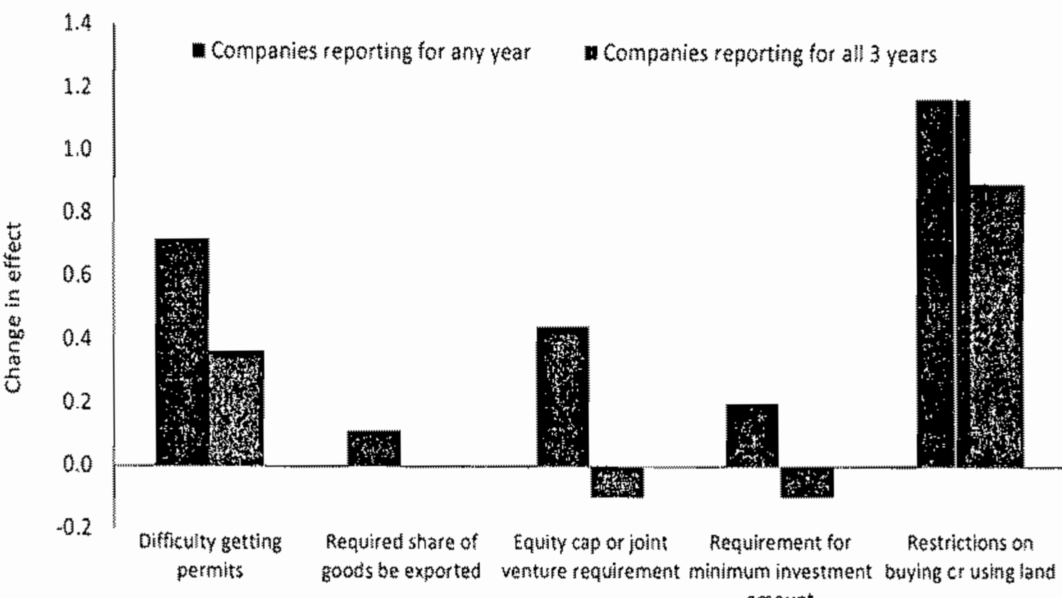
[c] Share of companies reporting an effect of 3–5, indicating the policy had a moderate, severe, or prohibitive effect on activities in 2007, 2010, or 2013.

survey, the negative effect of this barrier increased over time, rising from an average of 2.2 in 2007 (on a scale of 0 to 5) to an average of 2.9 in 2013.

Equity caps or joint venture requirements were the second most-faced FDI barrier, reported by 11.7 percent of companies overall. The negative effect increased in 2010, then declined in 2013, consistent with the Indian government's move to liberalize investment regulations in a number of industries since 2010.

However, when the Commission's analysis considered only the companies that reported on the effect of each issue for all three sample years, the average effect was lower, as was the change over time (figure 7.2). Companies more familiar with the Indian market

Figure 7.2: Change in the burden of barriers over time, 2007–13, for sales of goods



Source: USITC calculations of weighted responses to the Commission questionnaire (question 4.6).
Note: For companies reporting for all 3 years, there was no change in effect over time for "Required share of goods be exported," so the bar is at 0.0. See appendix Table I.32 for underlying data for this figure.

(i.e., those operating in India throughout the 2007–13 period) may have a different perception of existing FDI barriers than do new entrants to the market. New entrants rate the effect of these barriers higher than firms that have been in the market longer and may be more familiar with local conditions.

By Industry Group

The majority of companies with affiliate sales of goods in India in each industry group surveyed do not face barriers related to FDI. Of those that did, as noted above, companies in most industries most frequently face difficulty getting permits and investment approvals. This is particularly true in the chemicals and textiles sector, for which almost 40 percent of U.S. companies reported such problems (table 7.8). For companies involved in agriculture and food sector, restrictions on buying or using land are encountered most often.[644]

[644] Disaggregated results were not precise enough to report information for other industries.

Table 7.8: Mean share of companies reporting affiliate sales of goods that faced investment issues, by industry, percent

Sector	Difficulty getting required permits, approvals, or licenses for investment	Requirement that a share of goods produced be exported	Restrictions on share of investment (equity cap) or joint venture requirement	Requirement for minimum investment amount	Restrictions on buying or using land
Agriculture and food	17.8	4.4[a]	0	0	29.4
Chemicals and textiles	38.6	9.2[a]	6.9[a]	0	10.7[a]
Other manufacturing	25.9	10.5	19.4	8.2	13.2
All industries	22.4	5.9	11.7	3.1	9.3

Source: USITC calculations of weighted responses to the Commission questionnaire (question 4.2).
Notes: The share of companies that faced an investment issue is defined as any company that reported an effect of 1 through 5 for any year on the survey. Industry groups for which survey data were not sufficiently precise do not appear in the table.
[a] Low-precision estimate, with an RSE above 50 percent.

Effects of Barriers on Companies with Affiliate Sales of Services

The Commission estimates that during 2007–13, 36.9 percent of companies that owned affiliates in India either exported services to India, or sold services through Indian affiliates. The following section examines the reported effect of FDI-related barriers, as encountered by these U.S. companies, and reported differences by industry.[645]

Barriers over Time

The FDI-related barrier most frequently cited by companies with affiliate sales of services in India (18.7 percent) was difficulty obtaining required permits, approvals, or licenses for investment (table 7.9). As noted above, this is also the case for companies that sell goods through Indian affiliates. The negative effect of this barrier increased over time, rising from a reported average of 1.5 in 2007 to an average of 2.8 in 2013. About 11 percent of these companies face equity caps, joint venture requirements, or other policies that restrict investment. Fewer U.S. companies reported facing minimum investment requirements or limits on geographic expansion.

[645] In the survey, companies reported the sector that accounted for the highest percentage of revenue for their entire organization, but did not report the sector of individual affiliates in India. For this reason, companies in goods industries may report facing barriers to the provision of services, and companies primarily involved in providing services may also face barriers to goods production.

Table 7.9: Effects of investment policies on U.S. companies that have foreign affiliate sales of services in India, by policy type, 2007–13

Policy issue	Share of companies (%)		Mean effect[a]		
	Facing the issue[b]	Substantially affected[c]	2007	2010	2013
Difficulty getting required permits, approvals, or licenses for investment	18.7	12.9	1.5	2.3	2.8
Restrictions on share of investment (equity cap) or joint venture requirement	10.7	5.6	2.2	2.5	2.3
Policies other than equity caps that restrict investment	11.2	7.2[d]	1.7	1.7	2.7
Requirement for minimum investment amount	7.2	1.7	1.4	1.6	1.7
Limits on geographic expansion within India	3.2	1.8[d]	0.5	1.1	2.8

Source: USITC calculations of weighted responses to the Commission questionnaire (question 5.2).

[a] On a scale from 0 (did not face the barrier) to 5 (prohibitive effect on activities).

[b] Share of companies reporting an effect from 1 (faced the policy but it had no effect on activities) to 5 (prohibitive effect) in 2007, 2010, or 2013.

[c] Share of companies reporting an effect of 3–5, indicating the policy had a moderate, severe, or prohibitive effect on activities in 2007, 2010, or 2013.

[d] Low-precision estimate, with an RSE above 50 percent.

Geographic expansion in India was not considered a limitation by many companies. But for those companies that did face such limits, the effect grew considerably during the period: the mean effect increased from 0.5 in 2007 to 2.8 in 2013.

By Industry Group

Financial services companies with affiliate sales of services in India are most likely to face measures that restrict FDI, particularly restrictions related to equity caps (42.0 percent), consistent with India's 26 percent equity cap on FDI in insurance (table 7.10). More than one-third of financial services providers also faced requirements for minimum investment amounts. Companies providing other types of services most often face difficulty getting permits and investment approvals.

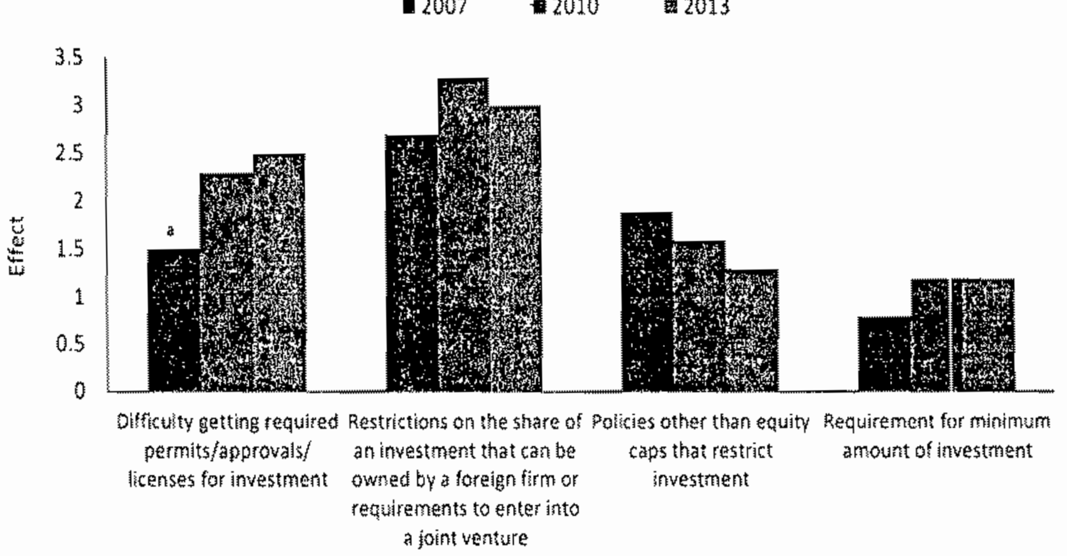
For a few specific industry groups, the data permit a deeper look into the survey results. For financial services firms, restrictions on the equity share in an investment were judged to be the most severe (figure 7.3). The negative effect of investment approval problems steadily rose between 2007 and 2013, while the effects of policies other than equity caps appeared to ease over time. Companies active in the insurance and non-insurance financial services industries face different barriers, but data do not permit separating the two groups for analysis. For example, as discussed in more detail above, insurance companies face a 26 percent FDI equity limit, while banks do not, though they do face certain restrictions on their operations.

Table 7.10: Mean share of companies reporting affiliate sales of services that faced investment issue, by industry, percent

Sector	Difficulty getting required permits, approvals, or licenses for investment	Policies other than equity caps that restrict investment	Restrictions on share of investment (equity cap) or joint venture requirement	Requirement for minimum investment amount	Limits on geographic expansion with India
Manufacturing	18.4	9.6	8.8	8.5	5.0[a]
Financial services	26.3	21.8[a]	42.0	34.3	8.4[a]
Other services	19.6	11.6	9.1	4.9	2.6
All industries	18.7	11.2	10.7	7.2	3.2

Source: USITC calculations of weighted responses to the Commission questionnaire (question 5.2).
Notes: The share of companies that faced an investment issue is defined as any company that reported an effect of 1 through 5 for any year on the survey. Industry groups for which survey data were not precise enough do not appear in the table.
[a] Low-precision estimate, with an RSE above 50 percent.

Figure 7.3: Effect of FDI barriers faced by financial services companies with an Indian affiliate

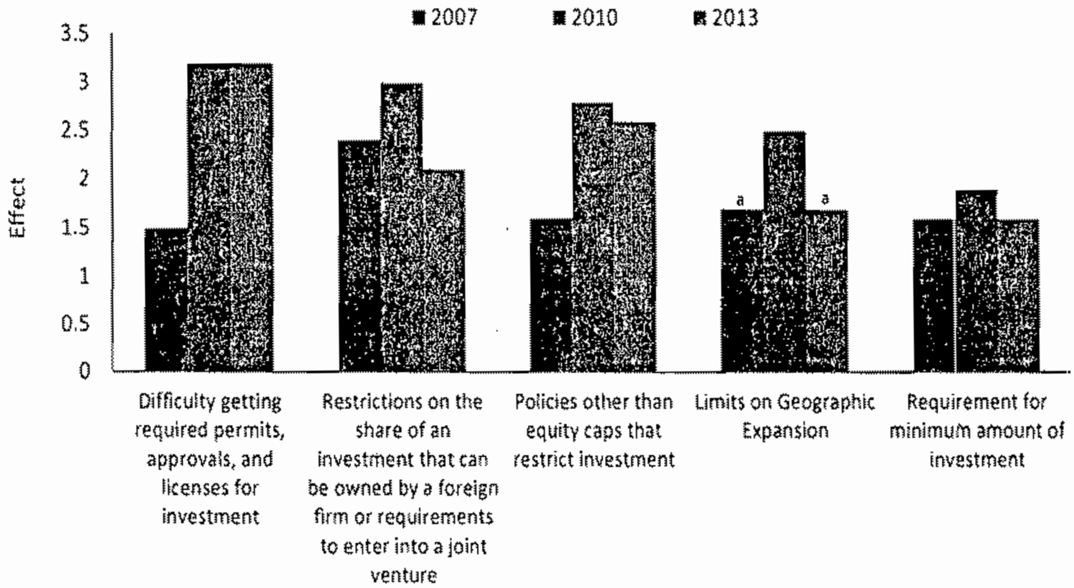


Source: USITC calculations of weighted responses to the Commission questionnaire (question 5.2).
Note: Results for limits on geographic expansion were not statistically precise. See appendix Table I.33 for underlying data for this figure.
[a] Low-precision estimate, with an RSE greater than 50 percent.

For ICT companies, the negative effect of most FDI-related barriers increased between 2007 and 2010, then stayed stable or declined from 2010 to 2013 (figure 7.4). Other services

companies experienced a steady increase in the effect from difficulty getting required permits, licenses, and investment approvals, from about 1.5 in 2007 to about 2.5 in 2013.[646]

Figure 7.4: Effect of FDI barriers faced by ICT companies with an Indian affiliate



Source: USITC calculations of weighted responses to the Commission questionnaire (question 5.2). See appendix Table I.34 for underlying data for this figure.
[a] Low-precision estimate, with RSE greater than 50 percent.

Effects of Barriers by State

According to the U.S.-India Business Council (USIBC), the bulk of U.S. investment in India is in the states of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu, Haryana, Punjab, Rajasthan, New Delhi/New Okhla Industrial Development Authority, and Madhya Pradesh/Chhattisgarh, which are seen as having the most "progressive" and investor-friendly policies. The USIBC stated that the success of these states in attracting FDI has served as a model of progress and development for India's other states.[647] Based on the Commission survey, for companies whose affiliates sold goods, services, or both, the leading FDI destination was Maharashtra, home to both Mumbai and Pune.[648]

Prohibitive Barriers to Investment

The Commission survey defined certain barriers to investment as "prohibitive," meaning that the barriers prevented foreign companies either from entering the market or from bringing

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[646] USITC calculations of weighted responses to the Commission questionnaire (question 5.2).
[647] Somers, written testimony to the USITC, February 25, 2014, 3.
[648] USITC calculations of weighted responses to the Commission questionnaire (question 2.6).

certain products or services into the market. Two types of FDI-related barriers were cited most often by U.S. firms as prohibitive: difficulties getting required approvals and permits for new investment, and restrictions on the foreign firm's share of an investment, in the form of equity caps or joint venture requirements (table 7.11). Companies in the content and media information and ICT sectors were most likely to experience difficulty with investment approvals as a prohibitive barrier, along with companies in the "other manufacturing" sector. Equity caps and joint venture requirements were most likely to be viewed as prohibitive by companies in financial services and other services, because foreign insurance companies are limited to a 26 percent equity share in Indian insurers. Equity caps and joint ventures are also encountered by 26 percent of retail and wholesale companies and by 21 percent of ICT companies.

Table 7.11: Share of U.S. companies for which FDI issues were deemed prohibitive, by industry, percent

Sector	Difficulty getting required permits, approvals, or licenses for investment	Restrictions on share of investment (equity cap) or joint venture requirement	Policies other than equity caps that restrict investment[a]	Limits on geographic expansion within India
Agriculture and food	17.2	2.8	0.0	0.0
Natural resources	0.0	3.5	0.0	0.0
Chemicals and textiles	9.5[b]	1.2	1.2[b]	0.0
Other manufacturing	28.9	10.8	1.6[b]	2.2
Retail and wholesale	9.6[b]	25.5	8.0[b]	0.0
Financial services	17.9[b]	49.2	27.1[b]	0.0
Content and media	47.8	11.9	0.0	0.0
ICT	45.4	21.4	17.5	3.9[a]
Other services	10.2[b]	34	5.2[b]	4.2[b]

Source: USITC calculations of weighted responses to the Commission questionnaire (question 7.5).
Note: Some issues not included due to lack of statistically precise data.
[a] Investment policies other than equity caps include, but are not limited to, limitations on juridical form, restrictions on repatriation of profits, and lack of regulatory transparency.
[b] Low-precision estimate, with an RSE above 50 percent.

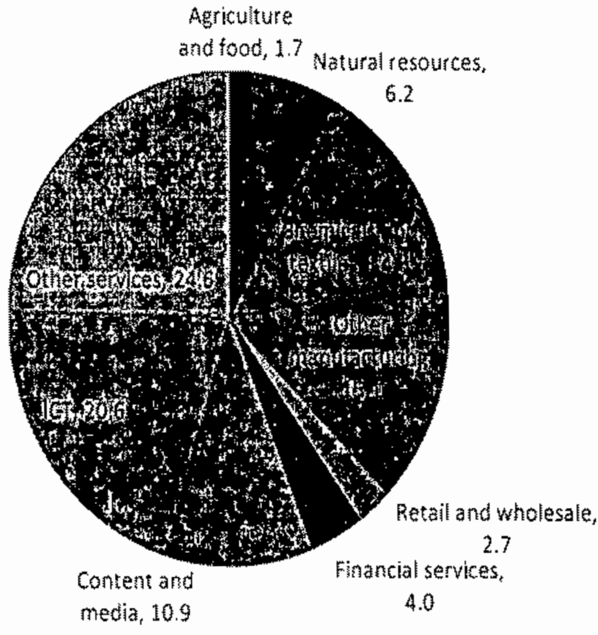
Companies Invested in India with No Sales in India

The Commission survey asked U.S. companies to report their perceptions of barriers to trade and investment according to whether they exported goods or services to India, or sold goods or services in India through their local affiliates in the market. However, the Commission estimates that 44.8 percent of U.S. companies have a 10 percent or greater stake in an Indian affiliate but do not report any sales of goods or services in India by those affiliates. These companies also represent 14 percent of all U.S. companies engaged in India from 2007–13. Consequently, many of these companies did not respond to questions about barriers that they encounter in India. "Parents" of these affiliates—that is, the U.S. firms that own a 10 percent or greater share of them—are active in a wide variety of industrial sectors, though the two largest sectors ("other

services" and ICT) account for 45.2 percent of the total (figure 7.5).[649] Most of the affiliates engaged in these two activities perform functions that are internal to the company, such as internal accounting and human resource functions, so they do not generate sales in India.

While parents of these affiliates account for a large share of the number of U.S. companies with affiliates in India, they account for only a minor share of total investment. However, the share of U.S. investment in affiliates with no local sales is growing: it was 4 percent of total U.S. FDI in India in 2007, 6 percent in 2010 and 14 percent in 2013.[650]

Figure 7.5: Companies with Indian affiliates but no affiliate sales, by industry of parent, percent



Source: USITC calculations of weighted responses to the Commission questionnaire (questions 1.6 and 2.5).
Note: See appendix Table I.35 for underlying data for this figure.

There are two principal reasons that U.S.-owned affiliates may not report any sales in India. First, India is well known as a location for offshoring of software-intensive, back-office operations such as internal accounting, human resources, and tax functions, and also for R&D operations. Companies active in all types of industries have turned to India to locate these functions, both to take advantage of lower wage rates than in the United States, and to access India's abundant labor pool of software engineers. In interviews, companies in industries as diverse as retail distribution, financial services, heavy manufacturing, and high-tech manufacturing stated that they have established large workforces in India focused on these

[649] Companies self-reported the activity that generated the largest share of their revenues.
[650] Low-precision estimates, with an RSE of 65.8% for 2007, 51.4% for 2010, and 47.9% for 2013.

back-office functions.[651] The Indian government has successfully established a number of software technology parks to attract such FDI, with access to transportation and dedicated infrastructure.[652]

Second, the affiliate may be located in India's extensive network of Special Economic Zones, dedicated to attracting investment from foreign manufacturing companies. Companies that invest in these zones are granted favorable tax rates and access to dedicated infrastructure, but all of the goods manufactured in the zones must be exported.[653] Consequently, U.S. investors may well have substantial investments in India that do not generate local sales. However, survey respondents were not asked whether they were engaged in back-office, software-related functions, manufacturing for export, or other activities.

[651] Industry representatives, interviews with USITC staff, Mumbai, June 24, 2014; Bangalore, June 18, 2014; Chennai, June 30 and July 1, 2014; and New Delhi, June 27, 2014.
[652] Industry representatives, interviews with USITC staff, Bangalore, June 18 and 20, 2014.
[653] If the goods are sold in the local market, company income taxes must be paid at standard rates.

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ANNEXURE - P-10
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INFORMATION ECONOMY REPORT 2015

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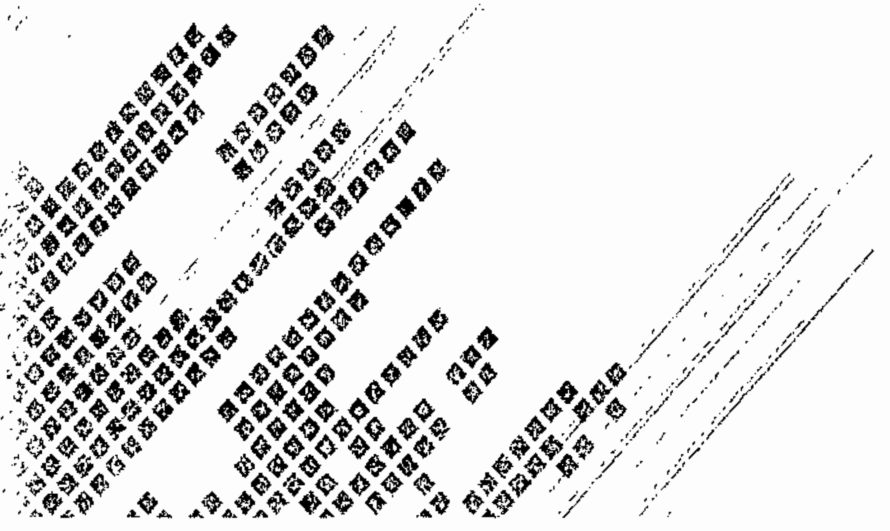

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INFORMATION ECONOMY REPORT 2015

Unlocking the Potential of E-commerce for Developing Countries

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NOTE

Within the UNCTAD Division on Technology and Logistics, the ICT Analysis Section carries out policy-oriented analytical work on the development implications of information and communications technologies (ICTs). It is responsible for the preparation of the *Information Economy Report*. The ICT Analysis Section promotes international dialogue on issues related to ICTs for development, and contributes to building developing countries' capacities to measure the information economy and to design and implement relevant policies and legal frameworks.

In this report, the terms country/economy refer, as appropriate, to territories or areas. The designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. In addition, the designations of country groups are intended solely for statistical or analytical convenience and do not necessarily express a judgement about the stage of development reached by a particular country or area in the development process. The major country groupings used in this report follow the classification of the United Nations Statistical Office. These are:

Developed countries: The member countries of the Organization for Economic Cooperation and Development (OECD) (other than Chile, Mexico, the Republic of Korea and Turkey), plus the new European Union member countries that are not OECD members (Bulgaria, Cyprus, Latvia, Lithuania, Malta and Romania), plus Andorra, Liechtenstein, Monaco and San Marino;

Countries with economies in transition: South-East Europe and the Commonwealth of Independent States;

Developing economies: In general, all the economies that are not specified above. For statistical purposes, the data for China do not include those for Hong Kong Special Administrative Region (Hong Kong, China), Macao Special Administrative Region (Macao, China) or Taiwan Province of China.

Reference to companies and their activities should not be construed as an endorsement by UNCTAD of those companies or their activities.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;

A dash (-) indicates that the item is equal to zero or its value is negligible;

A blank in a table indicates that the item is not applicable, unless otherwise indicated;

A slash (/) between dates representing years, for example, 1994/95, indicates a financial year;

Use of an en dash (–) between dates representing years, for example, 1994–1995, signifies the full period involved, including the beginning and end years;

Reference to "dollars" ($) means United States of America dollars, unless otherwise indicated;

Annual rates of growth or change, unless otherwise stated, refer to annual compound rates;

Details and percentages in tables do not necessarily add up to the totals because of rounding.

The material contained in this study may be freely quoted with appropriate acknowledgement.

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PREFACE

The 2015 edition of UNCTAD's *Information Economy Report* examines electronic commerce, and shows in detail how information and communications technologies can be harnessed to support economic growth and sustainable development.

Electronic commerce continues to grow both in volume and geographic reach, and is increasingly featured in the international development agenda, including in the World Summit on the Information Society outcome documents and in the outcome of the ninth Ministerial Conference of the World Trade Organization.

The *Information Economy Report 2015* highlights how some of the greatest dynamism in electronic commerce can be found in developing countries, but that potential is far from fully realized. The report examines opportunities and challenges faced by enterprises in developing countries that wish to access and use e-commerce. It highlights the latest market trends, benchmarks country performances with the UNCTAD E-commerce Index, reviews examples of e-commerce in rural areas and low-income countries, addresses relevant legal issues and provides policy recommendations.

As the world looks ahead to implementing a new agenda for the next generation of our development work, I commend this report to all those seeking to help unlock the potential of e-commerce for developing countries.

Ki Moon Ban

BAN Ki-moon
Secretary-General
United Nations

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LIST OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
B2B	business to business
B2C	business to consumer
B2G	business to government
C2C	consumer to consumer
e-commerce	electronic commerce
e-signature	electronic signature
EAC	East African Community
ECC	United Nations Convention on the Use of Electronic Communications in International Contracts
ECC-Net	European Consumer Centres Network
ECOWAS	Economic Community of West African States
EDI	electronic data interchange
FDI	foreign direct investment
GDP	gross domestic product
HD	high definition
ICPEN	International Consumer Protection and Enforcement Network
ICT	information and communications technology
INVIL	Information Network Village
IT	information technology
ITC	International Trade Centre
ITU	International Telecommunication Union
LDC	least developed country
Mbit/s	megabit(s) per second
MICT	Ministry of Information and Communication Technology (Thailand)
OECD	Organization for Economic Cooperation and Development
PKI	public key infrastructure
SaaS	software as a service
SMS	short message service
TFA	Trade Facilitation Agreement
UNCITRAL	United Nations Commission on International Trade Law
UNGCP	United Nations Guidelines on Consumer Protection
UPU	Universal Postal Union
URL	uniform resource locator
VAT	value added tax
WCO	World Customs Organization
WOUGNET	Women of Uganda Network
WSIS	World Summit on the Information Society
WTO	World Trade Organization

OVERVIEW

Global e-commerce is expanding fast with developing economies gaining prominence

The *Information Economy Report 2015* examines opportunities and challenges faced by enterprises in developing countries that want to engage in electronic commerce (e-commerce). As online transactions are increasingly embraced by enterprises and consumers, the global landscape is rapidly changing, with developing countries as a group assuming a more prominent role as both buyers and sellers of goods and services online.

It is estimated by UNCTAD that the value of global business-to-business (B2B) e-commerce in 2013 exceeded $15 trillion, with more than three quarters of the total accounted for by, in order of magnitude, the United States, the United Kingdom of Great Britain and Northern Ireland, Japan and China. The importance of e-commerce increased substantially in the past decade. In the United States, for example, its share in total manufacturing revenue surged from 19 per cent in 2002 to more than half in 2012.

Global business-to-consumer (B2C) e-commerce accounted for an estimated $1.2 trillion in 2013. While still considerably smaller than B2B, this segment appears to be growing faster. In developing countries, B2C e-commerce is rapidly expanding, particularly in Asia and Africa. China has already emerged as the largest global market for B2C e-commerce – measured both by online buyers and by revenue. The share of the Asia and Oceania region in global B2C e-commerce is expected to surge from 28 to 37 per cent between 2013 and 2018, and that of the Middle East and Africa to increase slightly from 2.2 to 2.5 per cent. Conversely, the combined share of Western Europe and North America is expected to fall from 61 to 53 per cent.

International postal deliveries of small packets and parcels have seen rapid growth in the past few years, mainly as a result of cross-border e-commerce. The volume of such trade rose by 48 per cent between 2011 and 2014. During this period, the share of developed countries as senders dropped from more than 70 per cent to less than 60 per cent. Developed countries and the Asia and Oceania region show significant trade surpluses in related deliveries, while the opposite is true for other regions.

The report outlines key opportunities and challenges of e-commerce ...

A number of proven and potential benefits are presented by B2B and B2C e-commerce, such as enhanced participation in international value chains, greater market access and reach, and improved internal and market efficiency, as well as lower transaction costs. It may spur job creation in the information and communications technology (ICT) sector and in enterprises that become more competitive thanks to online procurement and sales. New evidence from Europe presented in the report points to significant productivity gains from selling over the Internet and indicates that such effects are larger for smaller enterprises and in services industries.

But benefits from e-commerce do not accrue automatically and this form of trading also raises challenges for some existing players. With the entrance of competitors offering new product features and customer services, e-commerce redefines the marketplace. For example, traditional "bricks-and-mortar" stores increasingly need to adapt to enhanced price transparency and competition by providing new online sales channels, investing in new equipment and services, building complementary skills and revising their business strategies. The transition to online sales is not an easy task and even leading retailers of the world have wrestled with this challenge. There may also be a risk that technology-savvy foreign competitors outdo local firms, gaining greater market shares from e-commerce compared to local ones. Trade online has expanded the number of incidents and geographic reach of certain crimes and fraudulent activities. Governments may, furthermore, be concerned with tax erosion and transfer pricing.

... as well as major barriers and drivers, especially for micro and small businesses

A number of factors act as potential constraints on e-commerce. Economic barriers include inadequate ICT infrastructure and use, unreliable and costly power supply, limited use of credit cards, lack of purchasing power and underdeveloped financial systems. Sociopolitical barriers include weak legal and regulatory frameworks (which influence whether people and enterprises trust online transactions),

cultural preferences for face-to-face interaction, and reliance on cash in society. And cognitive obstacles, finally, include low levels of ICT literacy, awareness and knowledge related to e-commerce among both consumers and enterprises. Thanks to changes in the "e-commerce ecosystem" – the network of actors, institutions and infrastructure that forms the environment required for effective e-commerce – some of these barriers are today easier to overcome.

Although most micro and small enterprises in developing countries have yet to start buying or selling products online, recent developments are expanding their chances of seizing benefits from e-commerce. First, connectivity has greatly improved, notably as a result of the widespread uptake of mobile telephony and social media, and rising levels of Internet use enabled by deployment of international and national fibre-optic networks. Second, new applications, platforms and services are lowering the barriers to entry. Third, new payment solutions provide wider choice for both enterprises and consumers to conduct transactions online. Fourth, local e-commerce companies – sometimes backed by foreign investors – are rapidly appearing in developing countries, tailored to the needs and demands of local users. Fifth, there is growing readiness among enterprises and consumers to conduct business online as well as more awareness among Governments and lawmakers of the importance of relevant legislation and regulation to enhance trust online.

The UNCTAD B2C E-commerce Index: A new tool for measuring e-commerce readiness

To assess the readiness of countries for e-commerce, the report presents the new UNCTAD B2C E-commerce Index, covering data for 130 economies on four indicators: Internet use, secure servers, credit card penetration and postal delivery services. The UNCTAD B2C E-commerce Index value is strongly positively correlated to the variation in the share of individuals shopping online. It suggests that the highest e-commerce readiness is found in Luxembourg, Norway and Finland. Among developing and emerging economies, all front-runners are in East Asia: the Republic of Korea, Hong Kong (China) and Singapore.

The Index allows countries to compare their readiness with others and also indicates their relative strengths and weaknesses in different elements of the e-commerce process, such as the quality of Internet infrastructure and the availability of payment and delivery solutions. There is considerable variation at the regional level. For example, transition economies have a relatively high degree of home postal delivery, whereas credit card penetration is low compared with most developing regions. On the other hand, in Latin America and the Caribbean, and in Asia and Oceania, there is scope for improving the coverage of postal home delivery, and in Africa, performance is hampered by low overall Internet penetration levels compared with other regions.

Globally, credit card penetration has the lowest average value among the four indicators in the Index. Most retail e-commerce payments are still made via credit card, but the role of other methods is forecast to expand in the future. As a result, credit card use may become a less important determinant when alternative payment solutions gain traction. Mobile payments, for example, are expected to account for only 3 per cent of the value of e-commerce payments by 2017. However, they are already important in countries characterized by limited Internet use but well-functioning mobile money systems. In several African countries, mobile solutions represent the most viable infrastructure for e-services due to high degrees of financial exclusion, limited availability of fixed lines, cost of fixed lines and cost of the card infrastructure. In Kenya, online purchase payments from mobile phones accounted for 19 per cent of total e-commerce transaction value in 2012, a smaller share than for cash-on-delivery but larger than for credit card payments.

Most of the top e-commerce companies are from the United States and China

The emerging e-commerce landscape is featuring a growing number of enterprises offering global solutions as well as services that are carefully tailored to the local environment. Among the global players, a number of specialized e-commerce companies with web sales only play a prominent role in the market. Some of the largest such companies by online revenue are Amazon.com (United States), JD.com (China), Dell (United States) and Jia.com (China). In addition to these, several global platforms allow individuals and small businesses to offer their goods and services online, such as the Alibaba Group (China), eBay (United States) and Rakuten (Japan). In terms of gross merchandise value, the top e-commerce sites in the world in 2013 were the Alibaba Group, followed by Amazon and eBay.

E-commerce platforms with strong presence around the world, such as Amazon, eBay, Alibaba and OLX, provide solutions to many small enterprises. They

can facilitate access to international markets, carry out trading, and organize shipping and financial transactions within and beyond national borders. However, merchants in developing countries do not always enjoy equal access to these services. For example, only in one developing country (India) are merchants able to register as sellers on Amazon. In the case of eBay, users can register to sell on its platform in 24 United Nations Member States, including nine developing countries. Other eBay sites allow for buying but not selling. Such asymmetric access to marketplaces may accentuate existing imbalances in e-commerce trade as it is easier to export from one country to another.

But new entrants offer locally tailored solutions in developing countries

The absence of global platform providers creates scope for local players to fill the void. In sub-Saharan Africa, for example, various e-commerce solutions have been adapted to develop commerce over feature phones. There are thousands of e-commerce start-ups throughout the continent, but only a handful have reached significant scale. Many new e-commerce payment gateways have also appeared. Meanwhile, in Asian least developed countries, such as Bangladesh and Cambodia, new e-commerce sites are targeting the domestic market, enabling consumers to browse and order products online.

Global mapping of e-commerce legislation highlights progress and gaps

Buying and selling online raise legal challenges that have to be addressed by both Governments and the industry itself. This applies to domestic e-commerce and even more to international transactions. Even in developed regions, different legal requirements set in national laws hamper cross-border e-commerce. Despite significant progress in the adoption of laws, and to some extent legal harmonization in many regions, there is a need to align laws with international legal instruments. Furthermore, several Governments, especially in developing countries, need to adopt baseline laws in legal areas where they do not exist and ensure enforcement.

The *Information Economy Report 2015* maps the availability of national legislation in four key areas of cyber legislation: e-transactions, consumer protection online, data protection and privacy, and cybercrime. Relevant laws in these areas are mostly in place in developed countries, but in many other parts of the world the availability is inadequate. The share of countries that have adopted a law is generally highest for e-transactions and lowest for the protection of consumers online. Patterns vary by region. For example, in Central America, seven out of eight countries have consumer protection legislation in place, but more than half of the countries lack laws related to data protection and cybercrime. The subregion with the weakest coverage of e-commerce legislation is Middle Africa, where only two out of nine countries have e-transactions, consumer protection online and data protection laws, and only one country has adopted cyber legislation.

National strategies and international policies can help secure sustainable gains from e-commerce

As the digital economy expands and more business activities are affected, it is important to consider policies that can help to harness e-commerce for sustainable development. In this context, a national e-commerce strategy developed in collaboration with relevant stakeholders can play a useful role. Special attention may be devoted to measures to facilitate the effective involvement of micro and small enterprises.

Assessing e-commerce readiness is a natural first step towards formulating an effective national e-commerce strategy and to set priorities. This involves developing an understanding of national needs, characteristics, strengths and weaknesses, using tools such as the UNCTAD B2C E-commerce Index. Any assessment should include a comprehensive review of the evolution of e-commerce, including e-commerce-related initiatives, and a stocktaking of the resources and capabilities that could contribute to the development of e-commerce. This may require the collection of information through desk research and direct consultations with relevant stakeholders.

Properly identifying the main challenges and barriers and uncovering the dynamics underpinning them will help to ensure that policy measures adopted are effective. Key policy areas include the development of ICT infrastructure, logistics and trade facilitation, the legal and regulatory environment, e-payments, platforms and skills development in combination with an enabling international environment.

In the legal area, policy- and lawmakers need to take various actions. First, laws for e-signatures and e-contracting should be aligned to become internationally compatible. Second, consumer protection online should take into account ongoing

efforts by the OECD and the United Nations to update the international guidelines on consumer protection. Third, the establishment of minimum standards in regard to data protection and cybercrime could help ensure cross-border coordination on the design and implementation of relevant legislation and stronger enforcement institutions. Fourth, as cyber legislation is still a relatively new field of law in large parts of the developing world, further efforts are needed to strengthen the capacity of lawmakers and the judiciary. Finally, there is a need for raising the awareness about existing cyber legislation among all stakeholders.

At the international level, special attention is warranted in the areas of international trade rules, taxation and support to capacity-building in developing countries. E-commerce features in the international development agenda in outcome documents on the "vision beyond 2015" for the World Summit on the Information Society, as well as in the outcome of the Bali Ministerial Conference of the World Trade Organization. International declarations accord in that there remains ample scope for making e-commerce more inclusive and beneficial.

Further shifts from offline to online commerce are expected in the coming years. This will continue to change the ways in which consumers and enterprises interact. Some are better equipped to adapt to such transformations. From a policy perspective, it is important to create an environment that provides more equal opportunities for stakeholders in different locations and areas of society to take part in the process. In this context, international cooperation and effective dialogue between policymakers and other stakeholders will remain instrumental.

Mukhisa Kituyi

Secretary-General of UNCTAD

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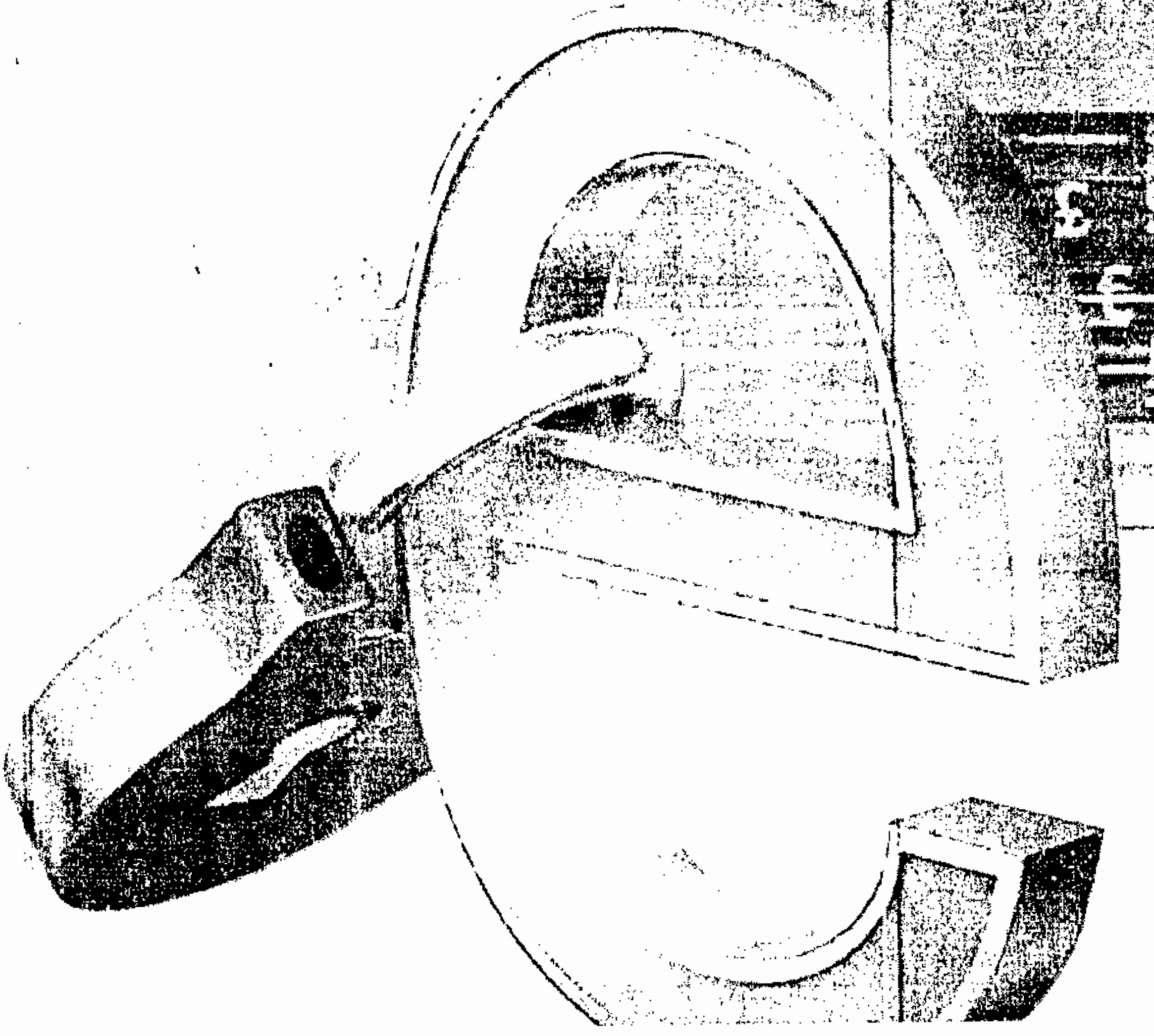
1

REVISITING THE DEVELOPMENT POTENTIAL OF E-COMMERCE

E-commerce is rapidly transforming the way in which enterprises are interacting among each other as well as with consumers and Governments. As a result of changes in the landscape of ICTs, e-commerce is now growing rapidly in several emerging markets and developing economies. There is growing evidence that the use of e-commerce has a significant impact on firm performance, especially on micro and small enterprises and in the services sector. Against this background, the Information Economy Report revisits the potential opportunities and risks of e-commerce and examines how countries can benefit more from it. This introductory chapter sets the stage.



A. E-COMMERCE AND DEVELOPMENT

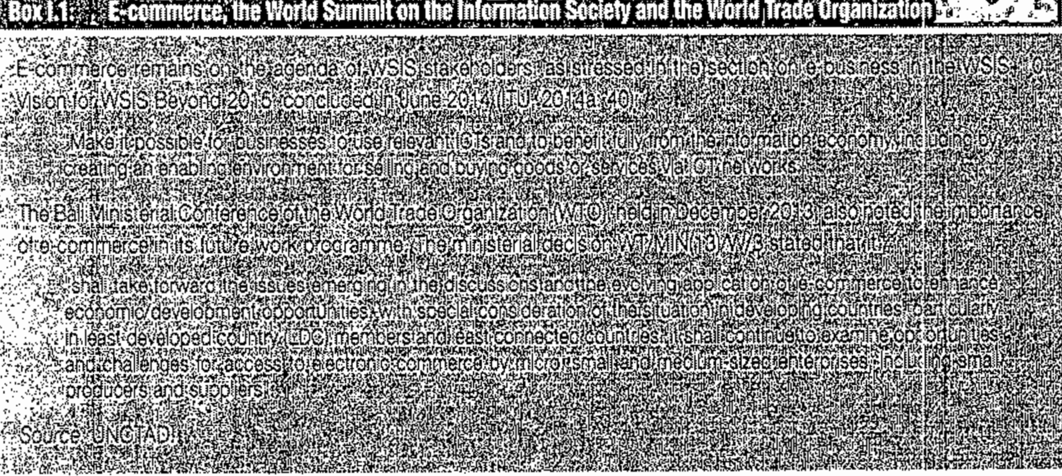
The promise of ICTs to allow entrepreneurs and enterprises to buy and sell their products over digital networks has been among the development priorities for the international community since the end of the 1990s. In 1999, UNCTAD emphasized that "electronic commerce has the potential to be a major engine for trade and development on a global scale" (UNCTAD, 1999: 1). The topic was highlighted in the outcome documents from the World Summit on the Information Society (WSIS), which was held in 2003 and 2005. And 10 years after the Tunis Agenda for the Information Society (ITU, 2005) was adopted, the e-commerce promise remains on the international agenda (box I.1). Productive use of ICTs is also emphasized in the draft sustainable development goals, notably in connection with women's empowerment, infrastructure and as enabling technologies.[1]

E-commerce offers potential benefits in the form of enhanced participation in international value chains, increased market access and reach, and improved internal and market efficiency, as well as lower transaction costs. However, the uptake of e-commerce was for a long time confined mainly to large enterprises in developed countries (UNCTAD, 2010). Barriers to e-commerce have been categorized as economic, sociopolitical and cognitive (Kshetri, 2007). Economic barriers refer, for example, to inadequate ICT infrastructure and use, unreliable and costly power supply, limited use of credit cards, lack of purchasing power and underdeveloped financial systems. Sociopolitical barriers may involve weak legal and regulatory frameworks that limit the extent to which people trust online transactions, cultural preferences for face-to-face interaction and reliance on cash in society. Cognitive obstacles, finally, relate to poor ICT literacy, awareness and knowledge related to e-commerce among both consumers and enterprises. Such barriers impair a country's ability to participate on equal terms in international e-commerce.

Changes in the ICT landscape have enlarged the scope for businesses in developing countries to engage in e-commerce. In September 2014, the initial public offering on the New York Stock Exchange of Alibaba Group – a Chinese e-commerce enterprise – was the world's largest ever, raising $25 billion.[2] Earlier in the same year, the African online retailer Jumia, which is part of African Internet Group, announced that it was expanding into Cameroon, Ghana and Uganda, complementing its existing operations in Côte d'Ivoire, Egypt, Kenya, Morocco and Nigeria.[3] These actions of Alibaba and Jumia are illustrative of the growing importance of developing countries in the transforming world of e-commerce. Indeed, the fastest growth of e-commerce is now witnessed in Asia and Africa (chapter II).

Although most micro and small enterprises in developing countries have yet to start buying or selling products online, recent developments have expanded their chances of seizing benefits from e-commerce:

- The connectivity situation has greatly improved, notably as a result of the widespread uptake of mobile telephony and social media, which has enabled more people and enterprises to have a web presence. Rising levels of Internet use enabled by deployment of international and national fibre-optic networks have similarly been



Box I.1: E-commerce, the World Summit on the Information Society and the World Trade Organization

E-commerce remains on the agenda of WSIS stakeholders, as stressed in the section on e-business in the WSIS+10 Vision for WSIS Beyond 2015 concluded in June 2014 (ITU, 2014a: 40):

> Make it possible for businesses to use relevant ICTs and to benefit fully from the information economy, including by creating an enabling environment for selling and buying goods or services via ICT networks.

The Bali Ministerial Conference of the World Trade Organization (WTO) held in December 2013 also noted the importance of e-commerce in its future work programme. The ministerial decision WT/MIN(13)/W/3 stated that it:

> shall take forward the issues emerging in the discussions and the evolving application of e-commerce to enhance economic development opportunities, with special consideration of the situation in developing countries, particularly in least developed country (LDC) members and least connected countries. It shall continue to examine opportunities and challenges for access to electronic commerce by micro, small and medium-sized enterprises, including small producers and suppliers.

Source: UNCTAD.

important. Meanwhile, new payment solutions provide a wider choice for both enterprises and consumers to conduct transactions online (chapter III);

- New applications, platforms and services are making e-commerce more accessible and easier to navigate, thereby lowering the barriers to entry. New digital products (such as mobile applications and games) and remotely delivered services (such as "microwork") have also opened new growth areas for developing countries (chapter IV);
- Local companies – sometimes backed by foreign investors – providing e-commerce solutions are rapidly appearing in developing countries, with offers that are tailored to the needs and demands of local users (chapters II and IV);
- There is growing readiness among enterprises and consumers to conduct business online as well as more awareness among Governments and lawmakers of the need for relevant legislation and regulation to enhance trust in e-commerce (chapter V).

B. DEFINITIONS OF E-COMMERCE

There are various definitions of e-commerce. This report draws on the one adopted by OECD (OECD, 2011):[4]

> the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations. To be included are orders made over the web, extranet or electronic data interchange. The type is defined by the method of placing the order. To be excluded are orders made by telephone calls, facsimile or manually typed e-mail.

For the purpose of this report, the concept of e-commerce will cover purchases and sales conducted over computer networks, using multiple formats and devices, including the web and electronic data interchange, using personal computers, laptops, tablets and mobile phones of varying levels of sophistication. E-commerce may involve physical goods as well as intangible (digital) products and services that can be delivered digitally.

There are various electronic relationships between Governments, enterprises, individuals/consumers and other public and private organizations. The prime focus here is on B2B and B2C transactions. Where appropriate, reference is also made to consumer-to-consumer (C2C) e-commerce and, to a lesser extent, business-to-government (B2G) transactions (box I.2).

Box I.2. Types of e-commerce

- **B2B:** Accounts for the bulk of e-commerce (chapter II). It involves transactions between businesses, such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. Some studies suggest that B2B offers greater potential benefits for smaller businesses than other forms of e-commerce (Kshetri and Dholakia, 2005; Rehbein, 2013). From the perspective of a small enterprise, engaging in B2B e-commerce may be a requirement for participating in national or global value chains. There are various specialized B2B platforms, typically catering to certain industries or value chains.
- **B2C:** Involves sales by "pure-play" e-commerce enterprises to consumers and by traditional bricks-and-mortar retail or manufacturing firms that add an online sales channel. Selling directly to consumers via ICT networks can help micro and small businesses to reach new markets, both domestically and internationally. There is a wide range of channels to reach consumers, including social networks, crowdsourcing platforms, dedicated e-commerce websites, mobile applications and more.
- **C2C:** This can be seen as the modern version of using the classified advertising section in a local newspaper or going to an auction. It covers online auction platforms (such as eBay or Taobao) and sales within online communities. C2C platforms offer possibilities for informal enterprises to engage in e-commerce.
- **B2G:** These transactions are similar to B2B, except that the buyer in this case is a government entity, such as in the case of public e-procurement.

Source: UNCTAD.

C. IMPLICATIONS OF E-COMMERCE

1. The e-commerce value chain

The shift towards e-commerce is already transforming the behaviour of businesses and consumers. The role of ICT applications and services is expanding across the entire value chain of e-commerce. The e-commerce process can be divided into four stages (figure I.1): information gathering, agreement, transaction and delivery. These stages apply equally to B2C and B2B e-commerce. At each stage, there are potential implications for consumers, enterprises and other organizations as well as Governments.

At the first stage, Internet browsing, e-mail inquiries and various social networking platforms help consumers to compare prices and features of products rather than relying on traditional information sources, including visits to specific physical sales outlets. Buyers visit websites with reviews conducted by other consumers and make their purchases at times that are convenient to them and not only during official opening hours of traditional bricks-and-mortar stores. Moreover, consumer choice is expanded as products from far afield can more easily be discovered, ordered and delivered over long distances. The consumer surplus from the Internet in the G-20 countries was estimated in 2012 to average about $1,430 per person, or about 4.4 per cent of gross domestic product (GDP).[5] A study of e-commerce in the European Union found that enhanced choice from buying online rather than offline was a more important contributor to increased welfare gains for consumers than lower prices (Civic Consulting, 2011).

At the second and third stages, online applications and payment solutions represent alternative solutions to having to visit a shop or making a phone call, using cash or paying by credit card at the shop in question. Finally, some products can be delivered digitally (for example, downloading an e-book) as opposed to physically (shipping a book).

Many consumers and enterprises remain reluctant to change their behaviour and start making purchases online despite the advantages. This may

Figure I.1. The role of ICTs in the e-commerce transaction value chain

Source: OECD (2013: 10).

be linked to concerns that payments will be lost, that data provided online will be compromised or shared without their consent, that goods or services acquired will not meet the quality expected, and that it will be difficult to return them if so desired. Other barriers to online purchases may include inadequate or expensive ICT infrastructure and services, poor logistics and transportation services, or a preference among consumers to touch and feel the products before making a decision to buy (Agwu, 2012; Ocha, 2011; Copenhagen Economics, 2013) (see also an example from South Africa, figure I.2).

For enterprises, e-commerce offers both opportunities and risks. New ICT applications and services are helping to reduce various costs for suppliers. Leveraging different online and mobile channels may enable a seller to reach more potential customers (both consumers and businesses) in domestic and foreign markets in a more targeted way and sometimes at lower cost than through traditional channels. Meanwhile, suppliers that rely more (or entirely) on e-commerce may be able to reduce investments in physical infrastructure (such as buildings) in expensive locations. And, finally, there may be ways to reduce the delivery cost (especially for digital products), and to use innovative ways of delivering physical products through dedicated e-fulfilment services (OECD, 2013).

In the e-commerce sector itself, entrepreneurs and enterprises in developing countries are discovering new business opportunities. Recent examples include the introduction of payment solutions (for example, Alipay in China or JamboPay in Kenya), e-commerce platforms (for example, MercadoLibre in Latin America and Zoom Tanzania), and innovative logistics, such as the motorbike delivery services of Giao Hang Nhanh in Viet Nam (see chapter II).

At the same time, most micro and small enterprises in developing countries are still unaware of the possibilities presented by e-commerce (Stockdale and Standing, 2006; Zaied et al., 2007; Thulani et al., 2010). They often lack the capabilities to benefit from them (Lawrence and Tar, 2010; Hourali et al., 2008; Ramsey et al., 2003). Apart from ICT skills, there is a need for in-house organizational capacity to handle orders, control quality and receive payment. Factors such as poor quality of the underlying ICT infrastructure, high adjustment costs, uncertainty surrounding e-commerce and limited perceived strategic value for the firm have been found to dampen the interest among firms to engage in e-commerce (Ben Aoun-Peltier and Vicente, 2012; Hollenstein and Woerter, 2007; Grandon and Pearson, 2004).

Figure I.2. Reasons for Internet users in South Africa not to make digital purchases, 2013 (Per cent of respondents)

Reason	Per cent
Prefer to touch and feel the product before buying	49.3
Do not trust online payments	36.8
Afraid the products will not suit me	10.7
Products do not interest me	9.1
Do not trust the site	8.7
Long delivery times	4.1
Other	11.3

Source: Interactive Advertising Bureau South Africa.

Meanwhile, the shift to e-commerce represents a potential threat to some enterprises. With the entrance of competitors offering new product features and customer services, e-commerce is redefining the marketplace. For example, traditional bricks-and-mortar stores need to adapt to enhanced price transparency and competition by providing new online sales channels, investing in new equipment and services, building complementary skills and revising their business strategies. This transition is not easy and even leading retailers have wrestled with it.[6]

From the point of view of Governments, e-commerce can bring benefits as well as challenges. It may spur new job creation in the ICT sector, related to software development, information technology (IT) consultancy services, web hosting and, of course, in enterprises that become more successful thanks to expanded online sales. It may help to boost exports, when domestic enterprises are able to break into foreign markets to connect with international supply chains, and add competitive pressure in the economy.

On the flip side, there is the risk that technology-savvy foreign competitors outdo local firms, gaining greater market shares from e-commerce compared to local firms. Governments may also be concerned with tax erosion and transfer pricing (Cockfield et al., 2013)(see also chapter VI). Greater reliance on online sales has also been associated with a proliferation of fraudulent activities and various cybercrimes (chapter V). Moreover, illegal and illicit goods increase the burden on customs and posts, which has led to the implementation of new practices to increase detection and confiscation. Beyond the economic field, e-commerce has given rise to concerns related to the health, safety and cultural dimensions. For example, while "Internet pharmacies" can help improve access to medicines there are doubts related to transparency, fraud, product quality, and even its viability as an ethical business model (World Health Organization, 2011).

2. Economic impacts of e-commerce

The literature on ICTs as an enabler of economic growth is vast, ranging from the aggregates (Stiroh and Jorgenson, 1999) and investments in hardware to more disaggregated studies on selected groups of firms (Brynjolfsson and Hitt, 2003; Van Reenen et al., 2010; Bartelsman, 2010; Black and Lynch, 2001). A review of the empirical literature on ICTs and productivity in firms suggests a clear positive impact, possibly increasing over time, but with the caveat that ICTs need to be well embedded to give effect (Cardona et al., 2013). For instance, this could mean complementary investments in skills and changes in organizational structure. Studies in Europe indicate that there could be a threshold as well as a ceiling regarding the prospect of benefiting from ICT usage in firms. For example, the relationship between broadband-Internet-enabled employees and firm performance tends to weaken when the intensity of usage comes close to saturation, but remains strong for firms at less intense ICT usage (Eurostat, 2008, 2013).

A field of the literature that is closely related to e-commerce emphasizes ICTs as a facilitator of international trade (Martens, 2013; Morgan-Thomas, 2009; Fraumeni, 2001). By using websites for marketing and e-sales channels, firms may be able to sell to markets otherwise not reachable due to, for example, distance or political systems. By reducing the barriers to trade, the Internet facilitates international e-commerce, with most of the short-term gains expected to arise in developed countries but with a shift to developing countries in the long run (Terzi, 2011). Comparisons between trade online and offline have found that the effect of distance is considerably smaller in the case of e-commerce thanks to lower information costs and greater trust (Lendle et al., 2012).

A survey of establishments in the Republic of Korea with 10 or more employees and with experience of selling goods or services online found the most important effects of e-commerce to be reduced transaction time and faster business processes, lower transaction costs and ability to reach new customers (Republic of Korea, Ministry of Security and Public Administration, 2013). Engaging in e-business and online sales has also been found to add value to retail firms (Zhu and Kraemer, 2005; Xia and Zhang, 2010). Having an online channel provided significant improvements in sales, cost, inventory and return on investments. Meanwhile, e-purchases (but not e-sales) had a positive significant effect on firm efficiency among manufacturing firms in Spain (Quirós Romero and Rodríguez Rodríguez, 2010). Positive effects of e-commerce to productivity were also observed for manufacturing companies in Taiwan Province of China, (Liu et al., 2013).[7]

3. New evidence on the productivity impact of e-commerce in Europe

Until recently, data did not allow for econometrical analysis of the specific link between e-commerce activities and enterprise productivity. This is still the case for developing countries. However, a unique data set collected through the European Union harmonized survey on ICT usage in firms in 14 European countries for the period 2002–2010 allows for in-depth analysis.[8] The use of a dynamic panel data model on microaggregated firm-level data made it possible to distinguish between short- and long-term effects and to control for endogeneity of e-sales activities.[9] E-sales were measured in two ways: as the share of firms selling over electronic data interchange (EDI) or websites, and as the share of sales conducted online.[10] Thus, e-sales cover both B2B and B2C transactions.

Despite considerable growth in the past decade, the proportion of e-sales to total sales remains small in Europe. On average, close to one seventh of sales is conducted over digital systems. In 2010, approximately one out of four firms was active with e-sales and somewhat more than half of the firms engaged in either buying or selling online. E-commerce in Europe is more common among large firms, high productivity firms, exporting firms and in firms with international experience. Moreover, firms with wider usage of ICTs, measured by the proportion of broadband-Internet-enabled employees, tend to have a higher level of labour productivity (Falk and Hagsten, 2014).

Econometric analysis – using different model specifications and controlling for industry, country and time effects – shows a positive and significant relationship between changes in labour productivity and changes in the percentage of firms engaged in e-sales. Industries with an increase in the proportion of firms selling online experienced higher labour productivity growth.[11] The magnitude of the relationship differs between industries. For the period 2002–2010, a one-percentage-point increase in the share of firms with e-sales activities raised the rate of labour productivity growth by 0.12 percentage points over a two-year period.[12] Given the low rate of productivity growth in most European countries, this effect is not negligible. The relationship appears to be stronger for services than for manufacturing, and the effect is higher over the long term.

Estimates suggest that increased use of e-sales led to a rise in labour productivity growth by 2.1 percentage points over the period 2003–2010 (or 0.3 percentage points per year).[13] Expressed differently, e-sales activities accounted for 17 per cent of the total growth of labour productivity for the period 2003–2010, a sizable increase in labour productivity of the business sector in the countries included. Investigation of the effects on firms of different sizes reveals that the impact is stronger on small than on medium-sized firms. For large enterprises, the impact of e-sales activities was not significant, possibly because the benefits of e-commerce for them occurred earlier. All results are robust across different specifications of the model and estimation methods.

This unique analysis of European data provides new insights into the link between e-sales and firm performance. In summary, a considerable share of the total labour productivity growth during the period 2003–2010 can be attributed to increased use of e-sales. The results furthermore indicate that the productivity effects are stronger for services firms and for small enterprises.[14] The analysis refers to a region of relatively high maturity of ICT use. More data and research are therefore needed to establish to what extent these results can be extended to countries at lower levels of ICT readiness. However, in combination with previous studies this analysis offers empirical evidence that a higher degree of e-sales helps enterprises become more productive.

Meanwhile, there is a need for additional research on the broader impacts of e-commerce, concerning effects on, for example, employment, income distribution, competition, structural transformation, taxation and the balance of trade.

D. ROADMAP TO THE REPORT

In view of the potential benefits and challenges from greater uptake of e-commerce, the following chapters of the report examine trends and developments in the evolving e-commerce ecosystem and discuss possible implications for developing countries. The report is structured as follows.

Chapter II reviews global and regional e-commerce trends. Based on an extensive review of official statistics and private-sector data, it investigates the magnitude of e-commerce, identifies the main markets and considers the extent of uptake in different parts of the world. It highlights the leading e-commerce companies and identifies what goods and services

are most frequently traded online. The second part of the chapter provides brief insights into regional developments in Africa, Asia and Latin America.

Chapter III sets out to measure the e-commerce readiness of countries. It discusses the main factors facilitating and constraining e-commerce – with an emphasis on B2C transactions – such as Internet connectivity, payment systems and delivery systems. The chapter also introduces the UNCTAD B2C E-commerce Index, covering 130 countries. It is particularly useful given the dearth of data about e-commerce usage in many low-income economies. The Index represents a new tool for countries to benchmark their e-commerce readiness against other locations and to identify areas of strengths and weaknesses.

Chapter IV turns the attention to different options that micro and small enterprises can explore to engage effectively in e-commerce. It examines various platforms and tools to determine their relevance for marketing and selling different products online. It discusses the respective advantages and disadvantages, taking into account issues related to payment processing and order fulfilment. In this context, it considers the extent to which small firms in developing countries are able to make use of certain global e-commerce platforms and payment solutions. The second part of the chapter is devoted to rural e-commerce and analyses the diverse experiences of three Asian economies in this area.

Chapter V maps the availability of legislation in key areas of e-commerce around the world. Special attention is given to e-transaction laws, consumer protection, data protection and privacy, and cybercrime. It identifies remaining challenges for compatibility of laws and their enforcement in view of the development of electronic transactions. The chapter furthermore highlights selected legal issues currently facing e-commerce development globally and proposes a set of recommendations.

The final chapter concludes and provides overall recommendations for the development of national strategies and policies for the promotion of e-commerce in developing countries. It also emphasizes the role of the international community in creating an environment for maximizing potential benefits from e-commerce and for minimizing costs and risks.

NOTES

1 See goals 5, 9 and 17; available at http://sustainabledevelopment.un.org/content/documents/4518SDGs_FINAL_Proposal%20of%20OWG_19%20July%20at%201320hrsver3.pdf (accessed 21 January 2015).

2 See "Alibaba issues additional shares to raise IPO total to $25 billion: report", *Reuters*, 22 September 2014; available at http://www.reuters.com/article/2014/09/22/us-alibaba-ipo-idUSKBN0HH04H20140922 (accessed 21 January 2015).

3 See "Africa e-commerce firm expands to new markets", *Reuters*, 28 July 2014; available at http://www.reuters.com/article/2014/07/28/africa-retail-internet-idUSL6N0PX2CU20140728 (accessed 21 January 2015).

4 This definition deviates from that used in the WTO work programme on e-commerce. It understands e-commerce to mean the "production, distribution, marketing, sale or delivery of goods and services by electronic means"; see http://www.wto.org/english/tratop_e/ecom_e/wkprog_e.htm (accessed 22 January 2015).

5 See "The Internet economy in the G-20", *bcg.perspectives*, 19 March 2012; available at https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_internet_economy_g20/ (accessed 22 January 2015).

6 See, for example, "H&M delays launch of US online shop", *Financial Times*, 27 September 2012; available at http://www.ft.com/cms/s/0/0e38889a-0873-11e2-b57f-00144feabdc0.html#axzz3PXaOR6KG (accessed 22 January 2015).

7 For other studies showing positive associations between e-commerce and firm performance; see Colombo et al. (2013); Liu et al. (2013); and Konings and Roodhoft (2002).

8 Statistical and analytical work by the OECD, Eurostat and the so-called European Union KLEMS project has broadened the field of ICT statistics and facilitated impact analyses. The ESSLait project has taken this a step further through the linking of firm-level data, allowing statistics on ICT usage of firms to appear in several dimensions not previously available (Micro Moments Database).

9 "Microaggregated" in this case means that information has been sourced at the level of the firm, but due to disclosure issues firms have then been grouped by industry or other firm characteristics, such as size and age class.

10 The full analysis and more information on the methodology and statistical analysis are provided in Falk and Hagsten (2014).

11 These results are in line with those of Xia and Zhang (2010), who found that online sales channels increased sales volumes for retailing firms.

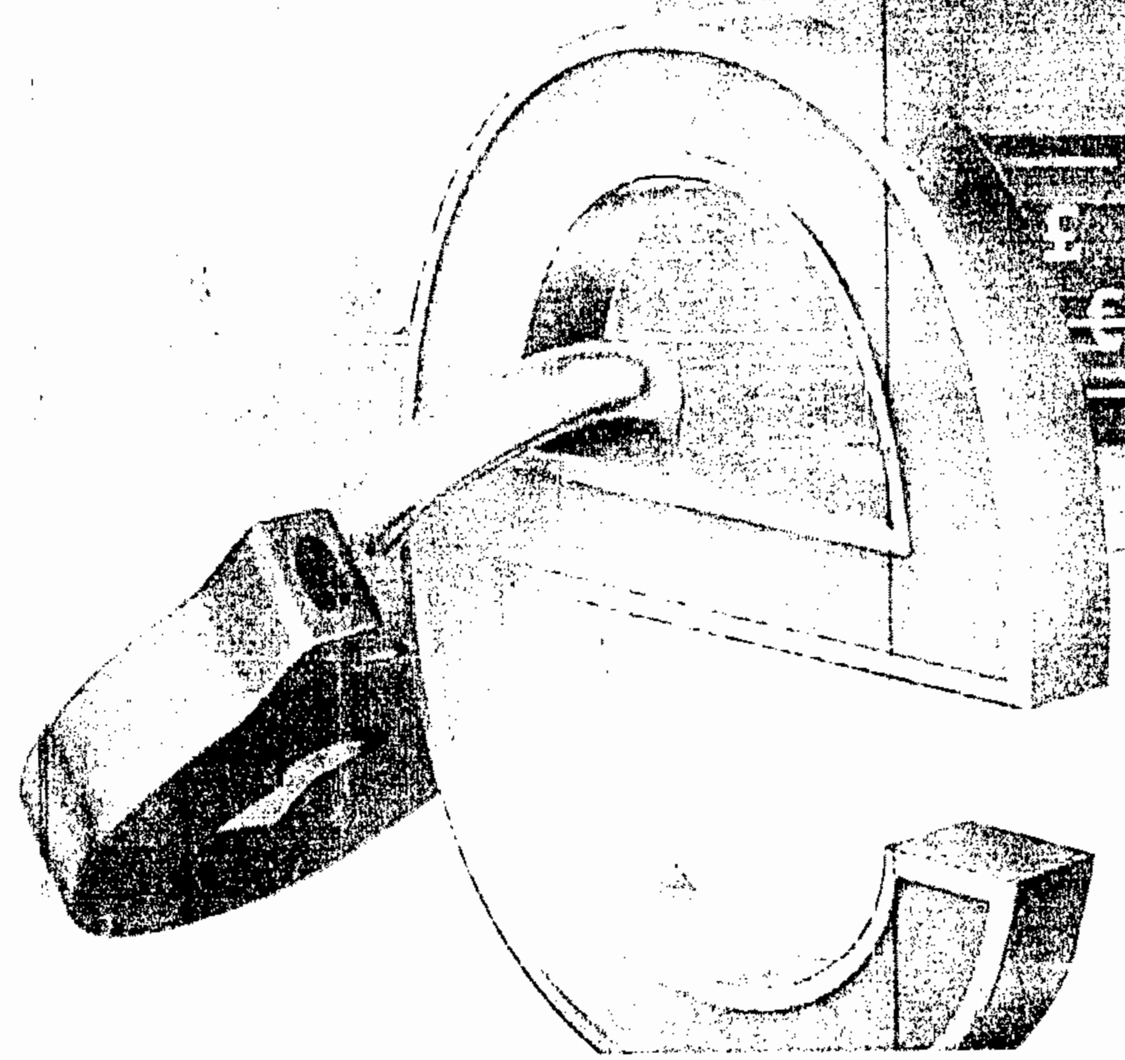
12 This result is based on a regression method in which all variables are measured as change over a two-year period.

13 Based on a dynamic panel data model controlling for endogeneity.

14 It should be noted that higher labour productivity growth as a result of e-commerce activities does not necessarily translate into new jobs. In developed countries, there is empirical evidence that industries with faster growth of ICT capital had greater increases in relative demand for highly educated workers and larger decline in relative demand for middle-educated workers (Michaels et al., 2010). This may also hold true for the effects of e-commerce on the skill structure of the workforce.

GLOBAL AND REGIONAL TRENDS

The global landscape for e-commerce is rapidly evolving, with developing countries assuming an increasingly important role. This chapter reviews recent trends at global and regional levels. It presents new estimates of the size of e-commerce, distinguishing between B2B and B2C. The chapter furthermore examines how the pattern of e-commerce by enterprises varies depending on enterprise size and industry. It notes the rapid growth of e-commerce in Asia as well as the dynamic evolution of online commercial activities in parts of sub-Saharan Africa and in Latin America.



A. THE GLOBAL E-COMMERCE MARKET IS EVOLVING

1. Market size estimates

Measuring e-commerce is challenging. There are no comprehensive official statistics on the value of domestic and international e-commerce. Only a few countries – mainly developed ones – compile data on e-commerce revenue. Available information suggests that the market for e-commerce has expanded significantly in the past decade and that it continues to grow. Such observations are supported by the estimates made by private consultancy firms. While global e-commerce is still dominated by developed countries, fast growth is observed in developing regions, especially in Asia.

Business-to-business transactions account for the overwhelming share of e-commerce revenue. In the United States, total revenue from e-commerce sales of the sectors covered amounted to $5.4 trillion in 2012, corresponding to more than 18 per cent of their total revenue (table II.1). The importance of e-commerce has increased substantially in the past decade. Its share in total revenue (excluding the selected services category) doubled from 15 per cent in 2002 to 30 per cent in 2012. In manufacturing, the share of e-commerce in total revenue shot up from 19 per cent to as much as 51 per cent during the same period (table II.1). Manufacturing and wholesale trade (the bulk of which concerns B2B) together accounted for 89 per cent of total e-commerce revenue, whereas retail (which corresponds to B2C) amounted to just 4 per cent.

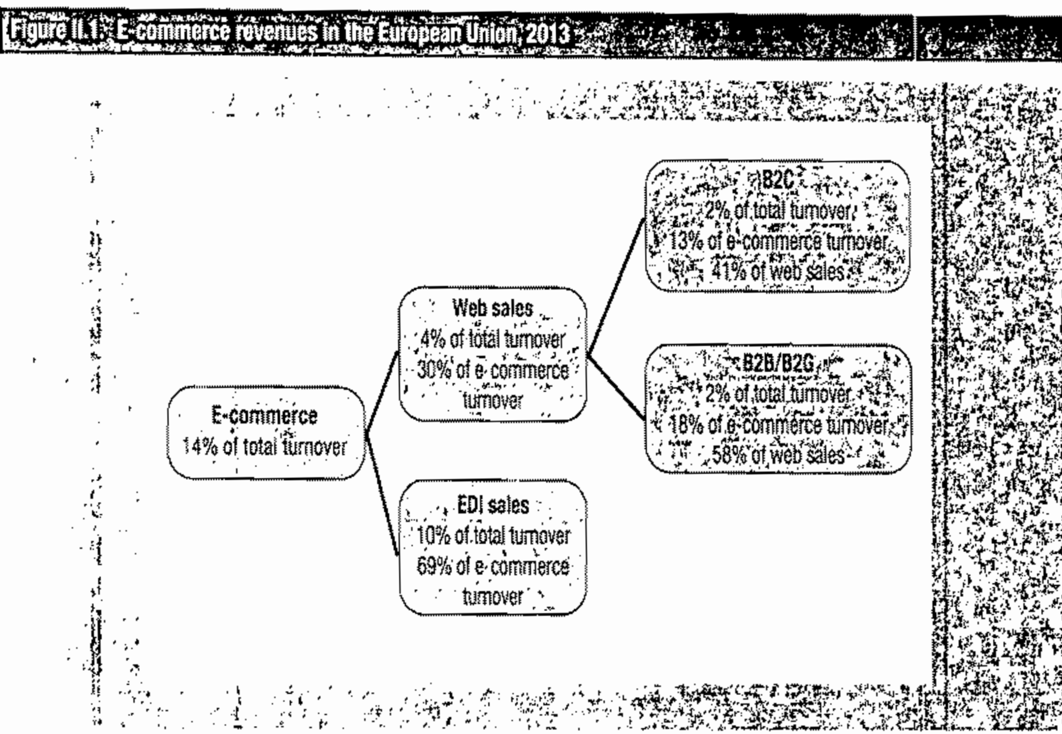
The predominance of B2B is confirmed in other countries. In Canada, almost two thirds (64 per

Table II.1. United States: Total and e-commerce revenues, by sector, 2002–2012 ($ billions)

Year	Value of shipment	Manufacturing	Merchant wholesale trade	Selected service industries	Retail trade	Total	Share of e-commerce (including services)	Share of e-commerce (excluding services)
2002	Total	3 921	4 162	NA	3 129	11 211	NA	
	E-commerce	752	880	NA	45	1 677	NA	15%
2003	Total	4 015	4 367	NA	3 263	11 646	NA	
	E-commerce	843	968	NA	57	1 868	NA	16%
2004	Total	4 309	4 840	NA	3 474	12 622	NA	
	E-commerce	996	1 060	NA	72	2 129	NA	17%
2005	Total	4 742	5 243	NA	3 690	13 675	NA	
	E-commerce	1 344	1 228	NA	91	2 663	NA	19%
2006	Total	5 016	5 584	NA	3 874	14 473	NA	
	E-commerce	1 567	1 305	NA	113	2 985	NA	21%
2007	Total	5 338	5 888	NA	3 999	15 226	NA	
	E-commerce	1 879	1 395	NA	136	3 410	NA	22%
2008	Total	5 468	6 136	NA	3 946	15 550	NA	
	E-commerce	2 171	1 422	NA	141	3 734	NA	24%
2009	Total	4 420	5 144	NA	3 630	13 193	NA	
	E-commerce	1 892	1 355	NA	145	3 391	NA	26%
2010	Total	4 905	5 757	11 164	3 841	25 668		
	E-commerce	2 350	1 547	302	169	4 368	17%	28%
2011	Total	5 481	6 451	11 544	4 133	27 610		
	E-commerce	2 704	1 696	338	198	4 936	18%	29%
2012	Total	5 756	6 771	12 004	4 344	28 876		
	E-commerce	2 989	1 789	366	227	5 371	19%	30%

Source: United States Census Bureau; available at http://www.census.gov/econ/estats/2012/all2012tables.html (accessed 22 January 2015).

Figure II.1: E-commerce revenues in the European Union, 2013



Source: UNCTAD, adapted from EUROSTAT.
Note: Numbers may not add to 100 per cent due to rounding.

cent) of the value of online sales by enterprises were attributable to B2B in 2013.[1] In the Republic of Korea, B2B accounted for 91 per cent of all e-commerce revenue in 2013,[2] and in the Russian Federation, that share was estimated at 57 per cent in 2013, followed by B2G (34 per cent) and B2C (9 per cent).[3] In Europe, some 14 per cent of the revenue of European Union enterprises with 10 or more employees (excluding the financial sector) was generated from e-commerce in 2013 (figure II.1), up from 9 per cent in 2004;[4] B2B and B2G together accounted for about 87 per cent of the total value of e-commerce and B2C for the remaining 13 per cent.[5]

While B2B represents the largest share of e-commerce, B2C appears to be expanding faster. For example, in the United States, its share of e-commerce rose from 2.6 per cent to 4.5 per cent between 2002 and 2012 (see retail trade column in table II.1).[6] And in the Russian Federation, B2C grew almost three times faster than B2B in 2013.[7]

In the case of B2C, official statistics and data from e-commerce associations are available for the top 10 countries ranked by the number of online buyers. Based on such statistics, B2C revenues in these countries amounted to just over $1 trillion in 2013 (table II.2). China had the largest market in terms of both the number of online buyers and revenue, whereas the United Kingdom of Great Britain and Northern Ireland had the highest average expenditure per online buyer, at almost $5,000 in 2013. The top 10 countries accounted for some 82 per cent of estimated total B2C revenues as reported by the consultancy eMarketer. The same countries generated a total of $12.5 trillion in B2B sales in 2012-2013. Assuming a similar average share of B2B revenue (that is, 82 per cent), global B2B sales amounted to $15.2 trillion in 2012-2013. Further analysis suggests that some 36 per cent of global B2B e-commerce was accounted for by the United States, followed by the United Kingdom (18 per cent), Japan (14 per cent) and China (10 per cent).

Estimates by private consultancies vary considerably depending on the methodology used for the data collection (Fraumeni, 2001). According to e-Marketer, B2C e-commerce is forecast to double from $1.2 trillion in 2013 to $2.4 trillion in 2018 (figure II.2). The fastest growth is expected in the Asia and Oceania region, the market share of which is set to grow from 28 to 37 per cent. The only other region that is forecast to increase its share of the global market is the Middle East and Africa, from 2.2 to 2.5 per cent. Conversely, the combined share of Western Europe and North America is expected to fall from 61 to 53 per cent.

Table II.2. B2C revenues in the top 10 countries, ranked by number of online buyers, 2012–2013

Country	B2C market		Online buyers		Source***
	2013 ($ billion)	As a share of B2B (%)	Number in millions**	Annual spend per buyer ($)	
China	301	18.5	271	1 111	Ministry of Commerce
United States	263	4.7*	133	1 975	Bureau of Census
Japan	119*	5.3*	55	2 171	Ministry of Economy, Trade and Industry
Germany	52	4.5*	33	1 593	Federal Ministry for Economic Affairs and Industry
United Kingdom	144	5.2*	30	4 874	Interactive Media in Retail Group
Russian Federation	13	14	20	662	Ecommerce Europe
Republic of Korea	22	2.2	19	1 195	KORSTAT
France	68	12	18	3 688	Fédération du E-commerce et de la Vente à Distance (Fevad)
Brazil	14		14	1 045	Associação Brasileira de Comércio Eletrônico
Canada	19*	11.9	13	1 446	Statistics Canada
Top ten total	1 016	8.1	605	1 679	
Estimates of global B2C sales in 2013	1 233	N/A			eMarketer

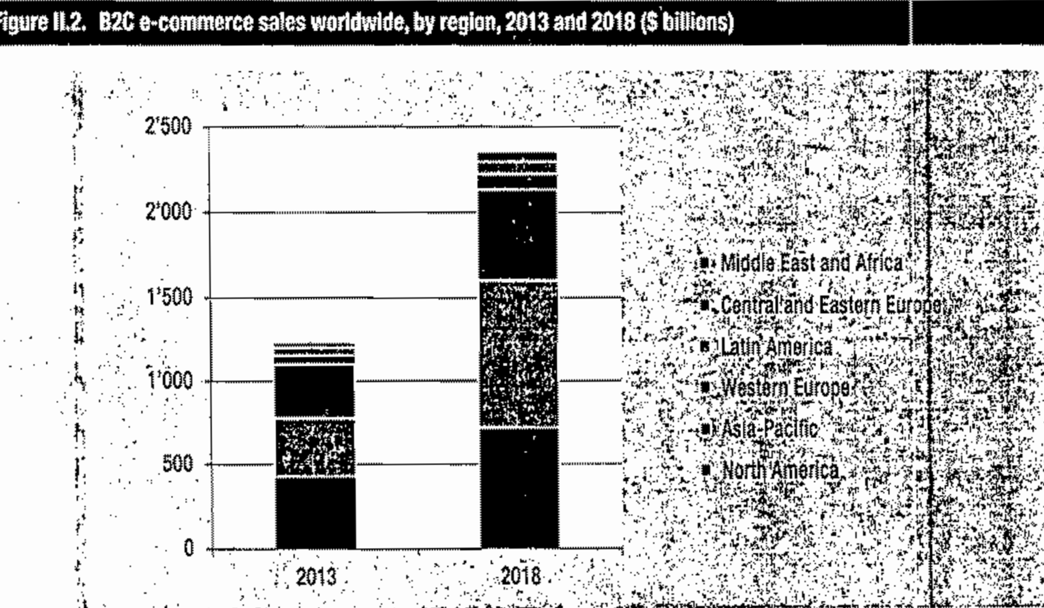
Source: UNCTAD, based on sources cited in the table.

* 2012.

** Derived from Internet user surveys compiled by government agencies (except for the United States (Pew Research Center) and for the Russian Federation (Ecommerce Europe)).

*** Refers to the source of B2C economic value (converted to United States dollars using the annual average exchange rate). India might qualify among the top 10, but does not report official statistics on the number of people buying online.

Figure II.2. B2C e-commerce sales worldwide, by region, 2013 and 2018 ($ billions)



Source: eMarketer.com, July 2014.

Note: Estimates are based on the analysis of data from other research firms and government agencies, historical trends, reported and estimated revenues from major online retailers, consumer online buying trends, and macro-level economic conditions. Data include products and services ordered and leisure and unmanaged business travel sales booked using the Internet via any device, regardless of the method of payment or fulfilment.

2. Cross-border e-commerce

Although the Internet should reduce barriers to international trade (Terzi, 2011), various factors constrain cross-border e-commerce. Examples include unreliable and lengthy transit times, complex and ambiguous return processes, customs delays, lack of transparency on delivery and pricing, and limited ability to alter delivery times and locations (see also box II.1).[8]

In terms of cross-border trade in goods, UPU data on the volume of international postal traffic of small packets, parcels and packages offer important insights into recent trends in e-commerce. Between 2011 and 2014, global deliveries of such items expanded by about 48 per cent. The data indicate an increasingly important role for developing countries, especially in Asia and Oceania (table II.3). That region's share of related exports rose from 25.5 to 32.9 per cent during the same period, while its share of imports surged from 15 to 23.9 per cent. The data further show that developed countries and Asia and Oceania run significant trade surpluses in this area, whereas Latin America and the Caribbean as well as transition economies import considerably more than they export.[9] As further shown in table II.4, the average time needed to ship parcels is also the shortest in the cases of developed countries and developing countries in Asia and Oceania.

In developed countries, the international dimension of e-commerce is still relatively modest. European e-commerce sales are predominantly domestic in nature. Whereas 16 per cent of enterprises in the European Union 28 in 2012 sold online to their own domestic markets, only 7 per cent reported e-sales to other European Union countries.[10] In Denmark, which ranks first among European Union countries, 30 per cent of enterprises made e-sales, but only one in ten reported selling to customers in another European Union country. In Canada, 80 per cent of the value of online sales was attributable to customers in Canada, 15 per cent to customers in the United States and the remaining 5 per cent to other countries.[11] In Japan, cross-border transactions accounted for about 18 per cent of all B2C e-commerce transactions (Payvision, 2014).

There are few official statistics on the extent to which developing countries are engaging in cross-border e-commerce, but there is some data from private sources (Payvision, 2014). Compared with the situation in developed countries, cross-border B2C or C2C transactions account for a larger share in a number of developing countries. In Asia, more than half of all such e-commerce transactions in both India and Singapore were cross-border in 2013. Turning to Latin America, cross-border trade accounts for the bulk of online buying by consumers in Colombia, Paraguay and the Bolivarian Republic of Venezuela, partly as a result of underdeveloped domestic e-commerce (Payvision, 2014).

Box II.1. Barriers to international e-commerce – a survey

In a survey of Swedish enterprises engaged in cross-border e-commerce, several barriers to such transactions were identified. Some of them have their origin in national regulations, while others are of a technical or logistical nature. The most commonly cited barriers were lack of information on laws and regulations, differences in consumer laws, specific requirements on website content and customs-related matters. Barriers identified were grouped into eight categories:

- Lack of information about relevant laws, regulations and methods;
- Burdensome customs procedures, high customs duties on returns, and corruption at the border;
- Differences in national consumer and sales laws;
- Requirements for specific payments solutions and differences in tax regulations;
- Weak protection of intellectual property rights;
- Limitations in the right to store and transfer information and data;
- Requirements to have a local presence in order to register top-level domains, Internet censorship and the need to use specific encryption technologies;
- Other barriers, including high roaming charges, problems in obtaining insurance and state subsidies.

Source: Sweden, National Board of Trade (2012).

Table II.3. International deliveries (tonnage) of small packets, parcels and packages, 2011 and 2014, distribution of regional flows as a share of global flows (per cent)

2011	Developed countries	Africa	Asia and Oceania	Latin America and the Caribbean	Transition economies	World
Developed countries	46.3	2.4	12.1	7	2.8	70.6
Africa	0.7	0.2	0.1	0	0	1
Asia and Oceania	21.6	0.3	2.7	0.5	0.4	25.5
Latin America and the Caribbean	1.7	0	0.1	0.3	0	2.1
Transition economies	0.5	0	0	0	0.3	0.8
World	70.8	2.9	15	7.8	3.5	100
2014	**Developed countries**	**Africa**	**Asia and Oceania**	**Latin America and the Caribbean**	**Transition economies**	**World**
Developed countries	33.3	1.7	20.4	4.6	3	63
Africa	0.7	0.3	0.1	0	0	1.1
Asia and Oceania	23.6	0.4	3.1	2	3.8	32.9
Latin America and the Caribbean	1.2	0	0.2	0.3	0	1.7
Transition economies	0.6	0	0.1	0	0.6	1.3
World	59.4	2.4	23.9	6.9	7.4	100

Source: UPU.

Table II.4. Average shipping time for parcels (normal service), Q2 2013 to Q1 2014 (Number of days from origin to destination)

	Developed countries	Africa	Asia and Oceania	Latin America and the Caribbean	Transition economies	World
Developed countries	9.7	23.2	20.1	27.2	16.8	19.4
Africa	14.7	20.2	18.1	36.0	27.7	23.3
Asia and Oceania	17.9	23.9	17.8	28.3	23.5	22.3
Latin America and the Caribbean	16.5	25.9	21.9	23.3	25.5	22.6
Transition economies	12.1	19.1	17.5	26.6	12.6	17.6
World	14.2	22.5	19.1	28.3	21.2	21.0

Source: UPU.

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3. E-commerce use hy households and enterprises

Official statistics on online purchases and sales reflect the actual state of the market and are important indicators of e-commerce performance. Though a comprehensive official international data set is lacking, available statistics from household and business ICT surveys cover most markets where e-commerce is significant.

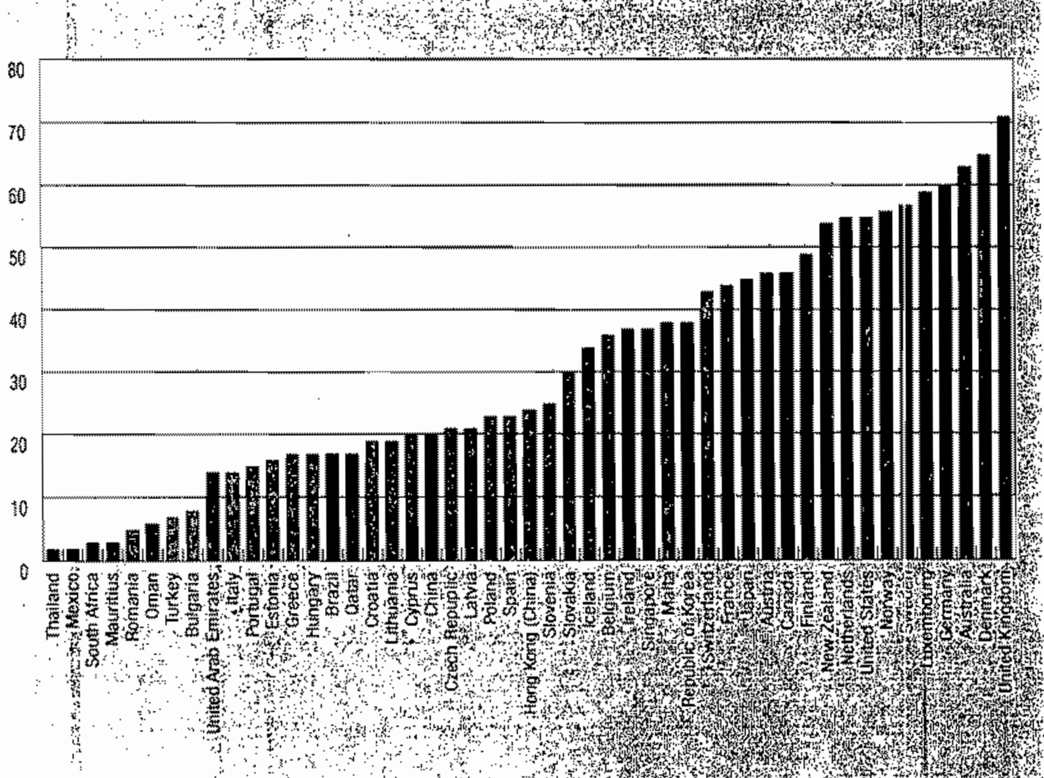
(a) Household survey data and online shoppers

Most countries that conduct household ICT surveys inquire about the activities carried out over the Internet, such as making online purchases. Some go further into consumer e-commerce behaviour, capturing data about the types of products purchased, the amounts spent, whether purchases were domestic or international, payment and delivery methods and reasons for not making online purchases.

The Partnership on Measuring ICT for Development proposes an indicator to be collected through household surveys on the proportion of individuals using the Internet by type of activity,[12] which includes making online payments and purchasing from government organizations; purchasing or ordering goods or services; and selling goods or services.[13] The main interest here is to obtain information on B2C e-commerce from the purchasing side (ITU, 2014b). The percentage of individuals who have made an online purchase ranges from less than 5 per cent, for example, in Mexico and Thailand, to more than 60 per cent in the United Kingdom, Denmark and Australia (figure II.3).

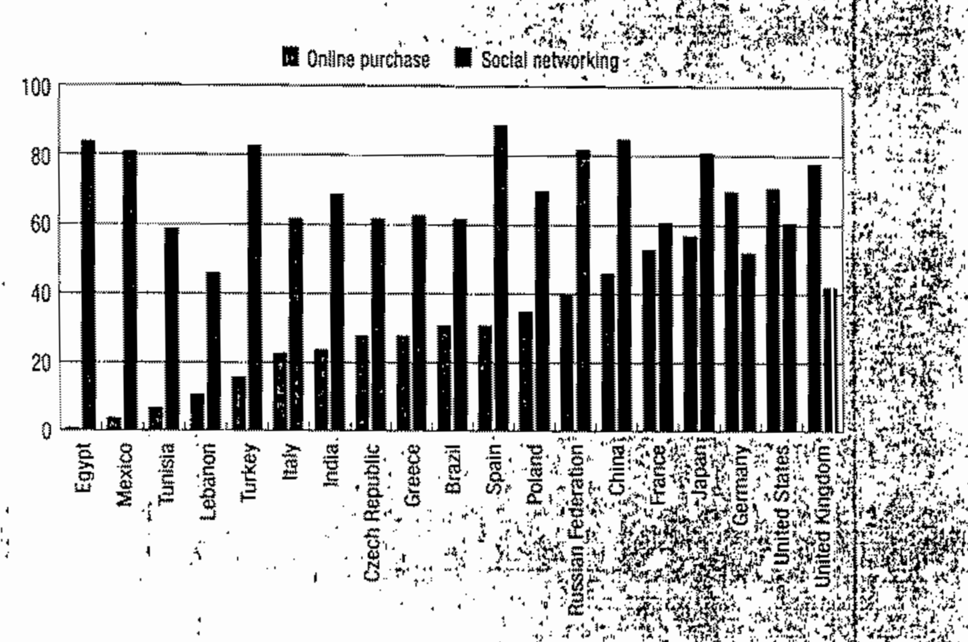
In most developing and transition economies, people buying online form a small proportion of all Internet users. Unlike social networking, where activity rates are relatively high among developing countries, the share of Internet users who use online shopping is generally lower in these countries than in developed countries (figure II.4). This may reflect limited purchasing power but also other mitigating factors, such as a lack of trust, limited shopping options (including content in local languages) and poor delivery services.

Figure II.3. Share of individuals purchasing products online, selected economies, 2013 (per cent)



Source: Eurostat, ITU and national data (in red).
Note: As age ranges and period in which a purchase is made varies across surveys, data are not strictly comparable.

Figure II.4. Share of Internet users involved in online purchase and social networking, selected countries, 2012–2013 (per cent)



Source: UNCTAD, adapted from national surveys, Eurostat and Pew.

An estimated 1.1 billion people around the world made at least one online purchase in 2013, accounting for 41 per cent of all Internet users (table II.5). With some 460 million online shoppers, Asia and Oceania accounted for the largest share (43 per cent), which is expected to grow further until 2018. Western Europe and North America follow, accounting for 17 per cent and 16 per cent respectively of global digital buyers. The highest growth between 2013 and 2018 is anticipated for the Middle East and Africa.

(b) Enterprise survey data

The proportion of businesses engaging in e-commerce is indicative of the in-country capability of firms in this area. Core indicators of the Partnership on Measuring ICT for

Table II.5. Estimated number of online buyers worldwide, by region, 2013 and 2018

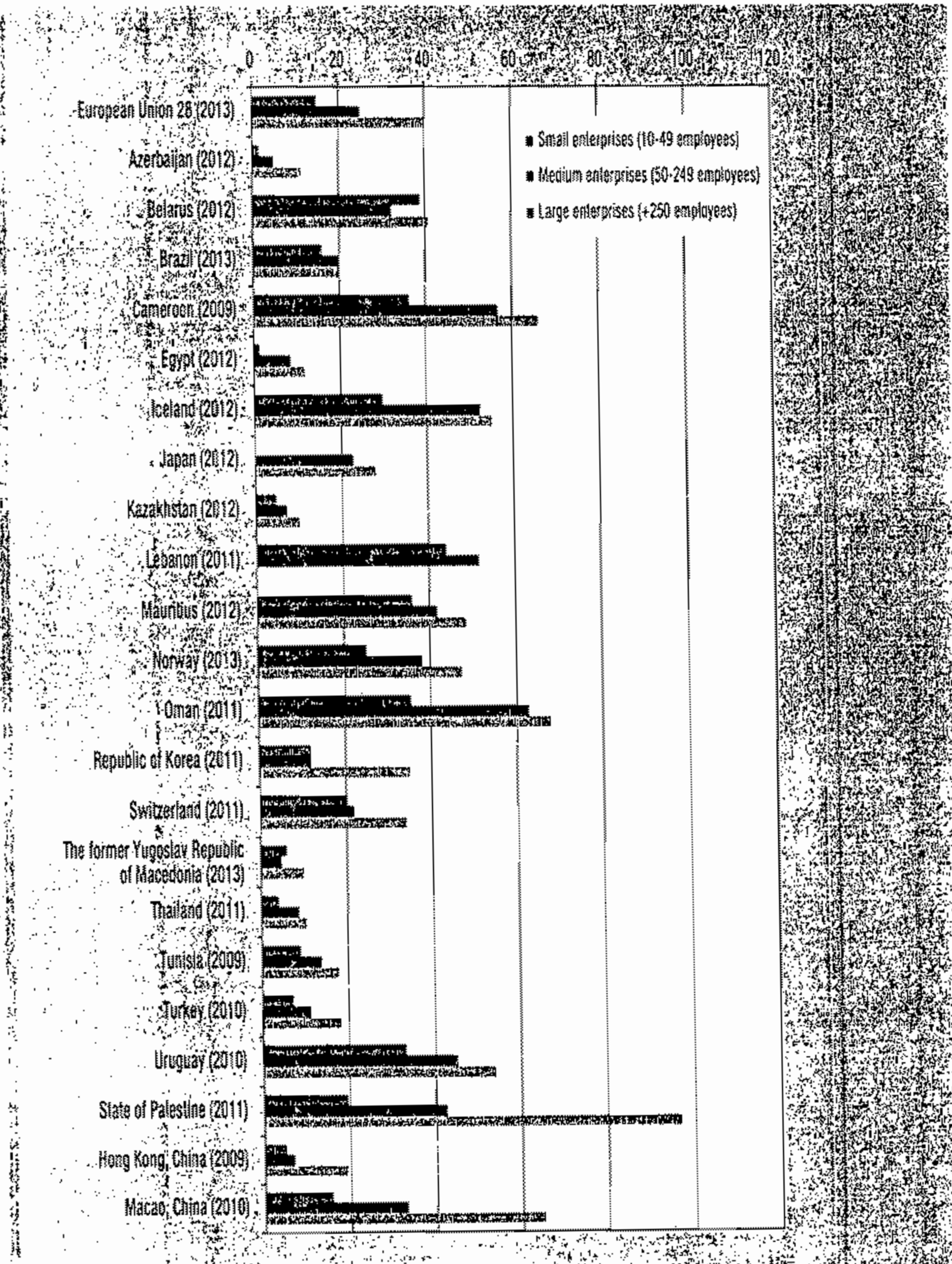
	Total (millions)		Growth (%) 2013–2018	Online buyers as a share of		
				World total of online buyers (%)	Population (%)	Internet users (%)
	2013	2018		2013	2013	2013
Asia and Oceania	460.3	782.4	70	42.6	14.9	42.1
Western Europe	182.3	210.2	15	16.9	49	64
North America	172.3	203.8	18	16	59.7	72
Middle East and Africa	93.6	170.6	82	8.7	7.1	31.3
Latin America	84.7	139.3	64	7.8	18.6	28.2
Central and Eastern Europe	86.4	117.4	36	8	24.1	41.6
World	1 079.6	1 623.7	50	100	15.2	41.3

Source: eMarketer, July 2014.
Note: Ages 14+; Internet users who have made at least one purchase via any digital channel during the calendar year, including online, mobile and tablet purchases; numbers may not add up to total due to rounding.

Development are limited to the number of enterprises placing orders (buying) and receiving orders (selling) online. Data for these indicators are collected through enterprise surveys by most developed countries and by selected developing and transition economies. However, related statistics remain scarce for developing countries and are virtually non-existent for LDCs. Moreover, available official data for developing countries mostly do not measure the value of e-commerce, distinguish between B2B, B2C or B2G transactions, or indicate whether they are domestic or cross border. However, in most countries with data, it is more common for enterprises to purchase inputs online than to sell online.

Enterprise size is generally a strong determinant of e-commerce, regardless of the level of development (figure II.5). In Oman, for example, 36 per cent of small

Figure II.5. Share of enterprises receiving orders over the Internet, by enterprise size, selected economies, latest available year (per cent)



Source: UNCTAD.
Note: Japan does not report data on enterprises below 50 employees.

enterprises had received orders over the Internet in 2011, compared to 68 per cent of large enterprises. In Azerbaijan, only 2 per cent of small enterprises received orders over the Internet in 2012, compared with 11 per cent of large enterprises. Even in the European Union, a similar pattern prevails. In 2012, 40 per cent of large enterprises, 25 per cent of medium-sized enterprises and 15 per cent of small enterprises had sold online.[14] Where data for microenterprises are available, the gap in e-commerce adoption is even wider.

While some industries are more likely to place orders online, patterns vary across countries. In most cases, the placing of orders online is most common among enterprises in computer and related activities. But beyond that, the trend is less clear. In a handful of developing and transition economies, the manufacturing sector leads. For example, more than half of all manufacturing enterprises in Belarus, Brazil and Colombia place orders online. Among the developed countries, only Australia, Ireland and New Zealand report higher percentages in this regard. Meanwhile, wholesale and retail trade has the highest percentage in Turkey and hotels and restaurants lead in Mauritius. Usage patterns may reflect more the particular economic characteristics of countries rather than the nature of the industry.

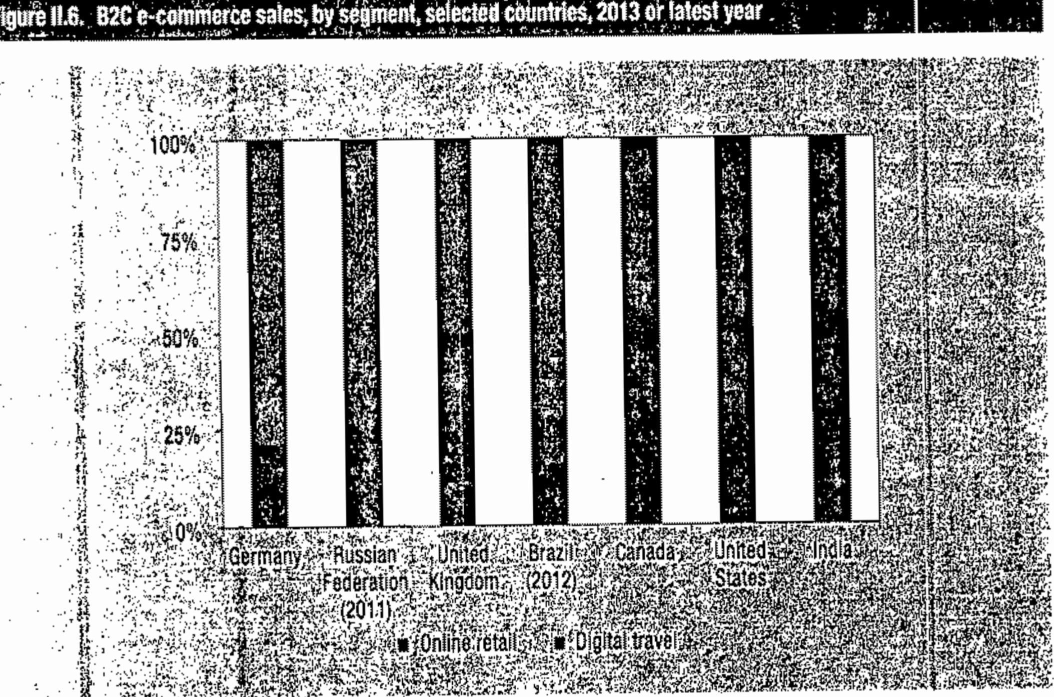
In terms of enterprises receiving orders online, hotels and restaurants generally have the highest incidence. E-commerce is increasingly important in this sector, not least due to the availability of online platforms where customers can search and book hospitality services, as well as read reviews from other customers. But the share of hotels and restaurants receiving bookings online still varies widely, from 3 per cent in Egypt to 73 per cent in Norway. The developing country with the highest such share is Mauritius (67 per cent). In other areas, the sectoral pattern is again less clear.

4. What do consumers buy online?

Within B2C e-commerce, a distinction is sometimes made between "digital travel" (leisure and unmanaged business travel sales booked using the Internet via any device) and online retail activities. The split varies between countries (figure II.6). In most developed countries for which data are available, the retail segment is considerably larger. The same applies to Brazil and the Russian Federation. By contrast, in India, B2C e-commerce sales are predominantly accounted for by digital travel expenditures.

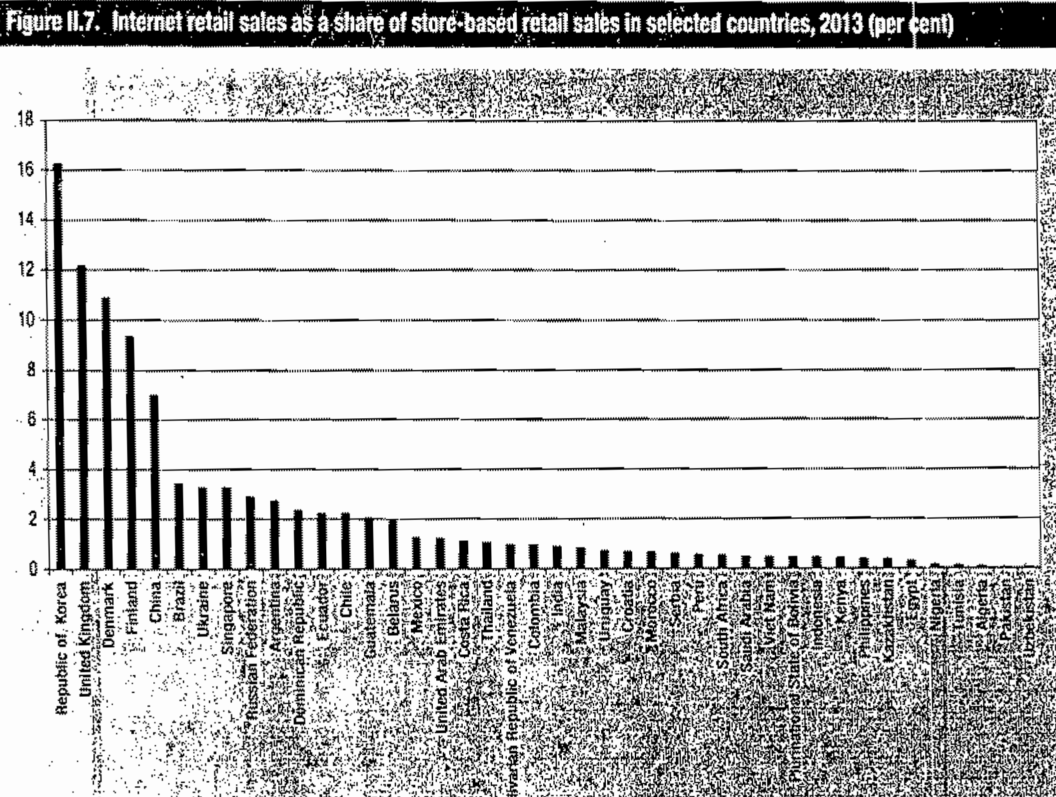
Among the selected countries included in figure II.7, online retail sales as a share of store-based retail sales

Figure II.6. B2C e-commerce sales, by segment, selected countries, 2013 or latest year



Source: UNCTAD, based on data from eMarketer, Payvision and other sources.

Figure II.7. Internet retail sales as a share of store-based retail sales in selected countries, 2013 (per cent)



Source: Euromonitor.

were the highest in the Republic of Korea, where it stood at about 16 per cent in 2013, followed by the United Kingdom and Denmark. The highest share in Latin America was in Brazil (3.5 per cent), and in Africa it was highest in Morocco (0.7 per cent), while the highest share among transition economies was in Ukraine (3.3 per cent).

Online consumption patterns differ across regions, but the top categories are fairly consistent. In table II.6, the top five items that consumers intended to purchase online in 2014 have been shaded. Travel-related items (such as tours, hotel reservations and airline tickets) and event tickets feature among the top five in all regions. Clothing and shoes are included for four regions, hard-copy books and e-books for two, and electronic equipment for one region. In the survey, almost half of the respondents intended to purchase clothing or make airline or hotel reservations using an online device in the next six months. Whereas computers are the preferred device for making online purchases in all regions, recent data suggest that mobile devices are a very close second in the Middle East and Africa (figure II.8).

5. Largest B2C e-commerce companies

More and more enterprises are exploiting the opportunities created by improved connectivity and greater willingness among consumers to shop online. According to some estimates, more than 1 million companies are already engaging in e-commerce around the world.[15] This includes both specialized e-commerce enterprises, for which the business relies entirely on the Internet, and enterprises that have adopted e-commerce strategies to complement existing activities. Many traditional large retail bricks-and-mortar companies are adopting e-commerce to defend their shares of the market. Among the major retailers that have embraced the online sales channel as a complement to their other activities are Apple, Dell and Wal-Mart (all United States), Otto (Germany), Tesco (United Kingdom) and Casino Guichard-Perrachon (France) (Deloitte, 2014).

A relatively small number of companies control a substantial share of the e-commerce market, with the level of concentration varying by region and depending on how the market is defined (table II.7). In the United

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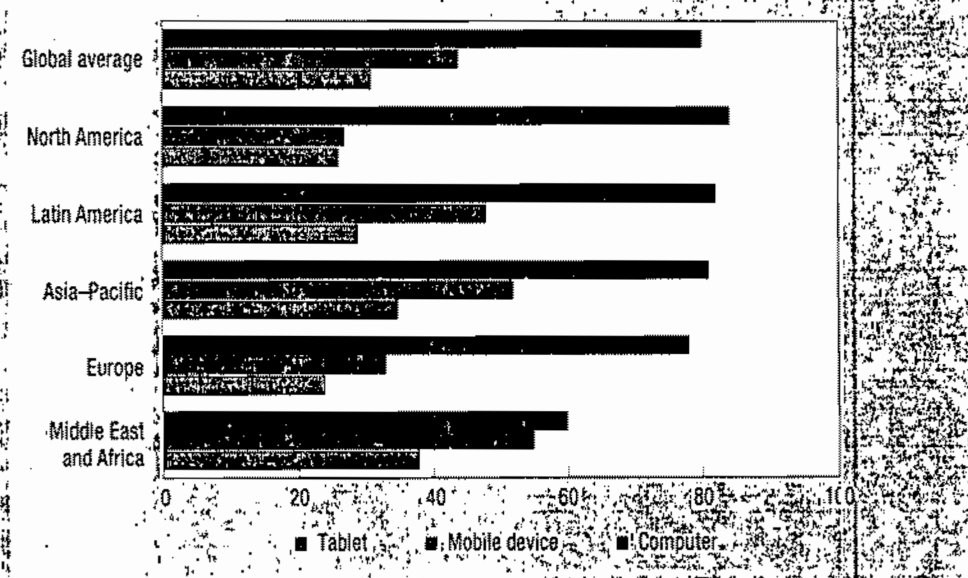
Table II.6. Online buying intentions in the next six months, 2014, by region (Per cent of respondents)

Item	Asia and Oceania	Europe	Middle-East and Africa	Latin America	North America
Clothing, accessories and shoes	[illegible]	[illegible]	26	[illegible]	[illegible]
Electronic equipment	41	25	26	[illegible]	30
Tours and hotel reservations	53	33	35	32	43
Airline tickets and reservations	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Mobile phone	44	22	[illegible]	27	22
Event tickets	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Computer hardware	36	23	25	20	29
Hardcopy books	[illegible]	[illegible]	22	24	31
Computer software	33	19	27	18	27
E-books	43	22	[illegible]	23	[illegible]
Sporting goods	42	19	20	19	21
Music (not downloaded)	33	19	21	19	30
Videos, DVDs and games	32	21	23	21	33
Cosmetics	43	21	19	20	21
Personal care	43	17	18	14	16
Groceries	41	14	15	11	14
Toys and dolls	40	16	18	17	24
Car, motorcycle and accessories	20	13	16	11	15
Pet-related products	26	15	14	11	19
Baby supplies	29	12	16	11	12
Flowers	21	11	16	10	21
Alcoholic drinks	25	9	11	8	10

Source: Nielsen (2014).
Note: The survey was conducted between 17 February and 7 March 2014 and polled more than 30,000 consumers with online access in 60 countries. Asia and Oceania covers 14 economies, Europe 32 economies, Latin America 7 economies, the Middle East and Africa 5 economies, and North America 2 economies.

Figure II.8. Devices used for online shopping, by region, 2014 (Per cent of respondents indicating that they will shop or make a purchase online in the next 6 months)



Source: Nielsen, 2014.
Note: See note to table II.6.

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States, the top 10 leading web retailers accounted for about half (52 per cent) of the total sales by the top 500 web merchants.[16] In the more diverse and fragmented European market, the top 10 accounted for 37 per cent of the sales by the top 500 web retailers in 2012, and the top 100 for 80 per cent. The level of concentration is higher in Asia, where the combined sales of the top 10 accounted for as much as 86 per cent of the web sales of the region's top 500 web retailers.[17] By comparison, the share was about 51 per cent in Latin America.[18]

A number of specialized, pure-play e-commerce companies, with web sales only, play a prominent role in the market. In the United States, such companies in 2013 accounted for about 41 per cent of the B2C e-commerce market. The largest e-commerce company by online revenue is Amazon.com, which appears among the top 10 web merchants in all the regions included in table II.7. China has seen the emergence of several major players, such as the Alibaba Group (box II.2) and JD.com (formerly 360Buy.com), appearing among the world's top e-commerce companies. As of 15 September 2014, Alibaba and Amazon ranked third and fourth, respectively, in market capitalization among the world's largest Internet companies.[19]

In terms of gross merchandise value, the top e-commerce sites in the world in 2013 were Alibaba, Amazon and eBay (table II.8). However, in terms of online revenue, Amazon and eBay were considerably larger than Alibaba, reflecting the fact that a large share of Alibaba's transactions are C2C, with only a fraction of the gross value of the sales generating revenue for the market platform. With the exceptions of Alibaba and Rakuten, all the other top e-commerce sites originate in the United States.

B. REGIONAL TRENDS

1. Africa: Dynamic growth from a low level

Africa remains the region with the lowest penetration of e-commerce. As noted above, Africa and the Middle East in 2013 accounted for about 2.2 per cent of global B2C e-commerce. There are few data at the country level, but estimates for the six countries included in table II.9 show positive growth between 2009 and 2012. The table also indicates that Egypt had by far the largest e-commerce sales among the six.

Table II.7. Largest Internet retailer companies in the United States, Europe, Asia and Latin America, 2012–2013

	United States 2013	Europe 2013	Asia 2012	Latin America 2013
1	Amazon.com (United States)	Amazon.com (United States)	Alibaba Group (China)	B2W Digital (Brazil)
2	Apple (United States)	Otto (Germany)	Rakuten (Japan)	Nova Pontocom (Brazil)
3	Staples (United States)	Staples (United States)	360Buy.com (China)	SACI Falabella (Chile)
4	Wal-Mart (United States)	Home Retail Group (United Kingdom)	Amazon.com (United States)	Wal-Mart Latin America (United States)
5	Sears Holdings (United States)	Tesco (United Kingdom)	Suning Commerce (China)	Netshoes (Brazil)
6	Liberty Interactive (United States)	Apple (United States)	Jia.com (China)	Máquina de Vendas (Brazil)
7	Netflix (United States)	CDiscount.com (France)	eBay (United States)	Dell (United States)
8	Macy's (United States)	Tengelmann (Germany)	51Buy.com (China)	Amazon.com (United States)
9	Office Depot (United States)	Shop Direct Group (United Kingdom)	HappiGo (China)	Magazine Luiza (Brazil)
10	Dell (United States)	Sainsburys (United Kingdom)	Vamcl (China)	Saraiva e Siciliano (Brazil)
Share (%) of top 500 sales	52%	37%	86%	51%

Source: UNCTAD analysis of data from internetretailer.com.

Box II.2. The Alibaba Group

When the Alibaba Group was listed on the New York Stock Exchange in 2014, it was initially valued at more than $200 billion, making it one of the 20 largest companies by market capitalization in the United States.[a] In 2013, it had 231 million active users, making on average 49 purchases a year, totaling more than $1.1 billion orders annually.[b]

Since the Alibaba Group was founded in 1999, it has quickly grown to become the largest online and mobile commerce company in the world in terms of gross merchandise volume. Its B2B trading platform for small businesses has helped to connect buyers in North America and Europe with suppliers and manufacturers in China. The company has launched a number of other related businesses, such as B2B online web portals, online retail and payment services, a shopping search engine, and data-centric cloud computing services – which, collectively, are reported to power 80 per cent of all online commerce in China.

The Alibaba Group includes companies that provide a diverse range of e-commerce solutions:

- Taobao Marketplace (www.taobao.com): China's largest C2C online marketplace;
- Tmall.com (www.tmall.com): A B2C online marketplace with a focus on imports. It is the largest retail platform in China, in terms of gross merchandise value (Payvision, 2014);
- Juhuasuan (www.juhuasuan.com): An online group buying marketplace;
- AliExpress (www.aliexpress.com): A global online B2C marketplace for consumers to buy directly from China;
- Alibaba.com (www.alibaba.com): A B2B online marketplace that facilitates global sourcing;
- 1688.com (www.1688.com): A China-only B2B online wholesale marketplace;
- Alibaba Cloud Computing (www.aliyun.com): A provider of cloud computing services to businesses and entrepreneurs;
- AliCloud: Provides e-retailers with analytical data about website activities and predictions for indicators such as future sales and products that are likely to be in high demand;
- Alipay.com: An online payment solution provider that has become the world leader, with a transaction volume of $150 billion in 2013. Some 60 per cent of Chinese online customers prefer to pay with Alipay (Payvision, 2014);
- China Smart Logistics: Operates a central logistics information system that connects a network of express delivery companies in China;
- 11main.com: A United States-based online marketplace for specialty items.

The Alibaba Group has recently engaged in various international investments. For example, in May 2014, it announced an agreement under which Alibaba Investment Ltd. will take a 10.35 per cent stake in SingPost upon completion.[c] Alibaba has furthermore entered an agreement with Australia Post to help more Australian merchants sell to Chinese consumers through Tmall. A deal was also announced with online shopping mall Lotte.com and the Japanese e-commerce company, Rakuten, opening the company to retailers in the Republic of Korea and Japan respectively.[d]

Source: UNCTAD, based on various sources.

[a] See "Alibaba debut makes a splash", *The Wall Street Journal*, 19 September 2014.

[b] See "Alibaba, by the numbers", *The New York Times*, 6 May 2014.

[c] See press release "SingPost and Alibaba Group to form strategic collaboration to grow international e-commerce logistics business," 28 May 2014, available at http://www.singpost.com/download/AboutSingPost/Media/NewsReleases/2014/pr20140528.pdf (accessed 23 January 2015).

[d] See "Alibaba's recent deals are paving the way for its Chinese marketplace to go global", *thenextweb.com*, 5 June 2014.

Table II.8. Top online sites by gross merchandise value, 2012 ($ billions)

Company	Country of origin	Gross merchandise value	Online revenues
Alibaba Group	China	170	4.1
Amazon	United States	87.8	61
eBay	United States	67.8	14
Staples	United States	11	11
Rakuten	Japan	15.8	4.7
Wal-Mart	United States	10	10
Netflix	United States	3.6	3.6
BestBuy	United States	1.7	1.7
Kohl's	United States	1.4	1.4
Target	United States	1.4	1.4

Source: See http://www.brainsins.com/en/blog/state-ecommerce-2014-new-ecommerc-models/2643 (accessed 23 January 2015).

The scope for e-commerce is rapidly improving, although significant barriers remain in areas such as transport and logistics, inadequate legal frameworks and limited purchasing power. Undersea fibre-optic cables have encircled Africa's coastlines and begun the long journey inland. Telecommunications providers are investing in 3G and subsidizing smartphone ownership. Innovative solutions are emerging that allow for the delivery of small pieces of the Internet even to basic handsets. At the same time, digital payment services are becoming more important and various online marketplaces are spreading.

Internet use in Africa is primarily conducted on mobile devices, influencing the scope for and the nature of e-commerce. Service providers in sub-Saharan Africa need to adapt their solutions to make them accessible on a small screen. Cell Bazaar (now Ekhanei) of Bangladesh pioneered the creation of a marketplace accessible to feature phone users. It enabled users in Bangladesh to buy and sell via a simple unstructured supplementary service data menu, accessible to virtually all feature phones. Today, it is relatively common in sub-Saharan Africa to see such services. Esoko.com, which started as a pilot with FoodNet in Uganda in 2006, has leveraged this approach to enable rural farmers to access marketplace information via simple short message service (SMS).

Table II.9. B2C e-commerce sales in six countries in Africa, 2009–2012 ($ billions)

Country	2009	2010	2011	2012
Egypt	2.10	2.50	3.20	3.90
Ethiopia	0.02	0.03	0.04	0.06
Ghana	0.03	0.04	0.07	0.09
Kenya	0.03	0.04	0.06	0.08
Nigeria	0.20	0.40	0.60	0.80
South Africa	0.60	0.80	1.10	1.20

Source: WorldPay (2014).
Note: Data include mobile and travel.

Services such as Binu, Opera Mini 4.5, Snaptu (which was acquired by Facebook in 2011) and Tuvitu have further improved the browsing experience of a feature phone, making them somewhat mimic the experience of a smartphone. These applications make it easier for first-time Internet users to get online. Internet.org, a consortium of companies that include Facebook, Ericsson and Samsung, is also leveraging this technology for people that are currently not connected to the Internet. In July 2014, it launched an app in Zambia, making a suite of basic websites available at no cost.[20] Meanwhile, smartphone adoption is also growing. In Kenya, for example, the mobile network operator Safaricom now sells more smartphones than feature phones.[21] Box II.3 illustrates the diversity of the evolving e-commerce ecosystem in sub-Saharan Africa.

The future of e-commerce in sub-Saharan Africa is promising. Large e-commerce companies such as those mentioned in box II.3 are building infrastructure and customer awareness that can be leveraged by smaller, more nimble startups. As the e-commerce ecosystem continues to mature, the barriers to entry for new companies will come down further. The first wave of "fast followers" to take advantage of this trend is likely to come from African technology hubs like Accra, Cairo, Cape Town, Harare, Kampala, Lagos and Nairobi. Players that are investing today have the potential to build positions in their respective markets. New entrants will continue to launch competing services, leading to better quality, further reach and lower cost. At the same time, as the market matures, major international players are likely to increase their regional presence.

2. Asia and Oceania: Major market with great diversity

This diverse region already boasts the largest number of online buyers in the world (table II.5), it accounts for an estimated 28 per cent of the total sales of B2C e-commerce (figure II.2), and for one third of the volume of international postal deliveries of small

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Box II.3. E-commerce companies in sub-Saharan Africa – selected examples

A range of e-commerce players have emerged in Africa in recent years, offering different solutions and services. While there are now thousands of e-commerce startups throughout the continent, only a handful have reached significant scale, often with foreign backing. The business models vary considerably.

- One Africa Media is backed by Seek (Australia) and Tiger Global (United States) and the holding company for Buy Rent Kenya, Brighter Monday, SafariNow/StayNow, Private Property, Jobberman and Cheki. Cheki is a "vertical classifieds" portal for car listings with a presence in 10 African countries.
- MIH Group/Naspers (South Africa) is behind brands such as OLX, News24 and Property24, and has previously supported DealFish, Kalahari and Mocality. OLX has a presence in more than 100 countries, including a handful in sub-Saharan Africa. It offers a "horizontal classifieds" portal that enables users to upload content, send purchase inquiries and close sales without the involvement of a neutral third party.
- Rocket Internet (Germany) operates in more than 100 countries and is behind e-commerce brands such as Jumia, Lamudi, Carmudi, Hello Food and Jovago in sub-Saharan Africa. Jumia is an e-commerce portal with a base in Nigeria and a presence in another seven African markets. Similar to Amazon.com, it maintains its own inventory and manages logistics and fulfilment end to end.
- Ringier (Switzerland) has ownership stakes in African e-commerce companies, such as Rupu, Pigiame, Zoom Tanzania, Tisu, Pulse, Allsports and Expat-Dakar.
- Bid or Buy in Kenya and South Africa combines B2C and C2C by enabling sellers to independently list items for purchase, while also managing some inventory directly. For example, a buyer in Kenya can either purchase an item from a third-party seller through a bidding process, or buy an item directly from Bid or Buy.
- Various e-commerce payment gateways have emerged. These include, but are not limited to, iPay, PesaPal, JamboPay, Paga, Kopo Kopo, Yo!Payments, Ozinbo, 3G Direct Pay, Interswitch, Simple Pay and Paynow. They enable sellers to accept various payment types to a single account. Paynow, for example, is an e-commerce payment gateway in Zimbabwe. Similar to PayPal, it enables an online merchant to accept various electronic payments from customers. Funds are held in escrow until the sale has been completed to the satisfaction of both parties.

Source: UNCTAD.

packages (table II.3). China represents a very large share of the e-commerce activities in the region. In fact, in that country alone, there are more than 29,000 enterprises focusing on B2C, B2B or C2C e-commerce (Payvision, 2014). Other important markets include Japan, the Republic of Korea and Singapore. At the same time, the region also comprises many economies that are still at a nascent stage of online commerce. Taking into account its huge population, there is considerable scope for further e-commerce expansion in the region. In 2013, digital buyers represented less than 15 per cent of the population in Asia and Oceania, as compared with 60 per cent in North America and 49 per cent in Western Europe (table II.5).

To illustrate the diversity of the Asian region, three brief cases are presented below on the e-commerce developments in Cambodia, Indonesia and the Philippines. All three are members of the Association of Southeast Asian Nations (ASEAN), but their experiences in the field of e-commerce is varied.

(a) Cambodia: Early signs of e-commerce

At first glance, the environment in Cambodia is not conducive to e-commerce. Internet adoption is low, with only five Internet users per 100 people in 2012, and an average fixed-broadband price of as much as 34 per cent of gross national income per capita (ITU, 2013). The lack of electronic payments and an unreliable postal system are additional challenges. For instance, only 0.5 per cent of adults used electronic means to make a payment in 2011. Added to this are remaining gaps in the area of e-commerce legislation (chapter V). Nevertheless, there are signs of e-commerce involving innovative enterprises that circumvent such practical hurdles. Most of them are clustered in Phnom Penh, the largest city, and operate a wide spectrum of services, from gaming to online shopping and programming.

One of the main technology companies in Cambodia, Sabay.com, was the first to introduce online gaming in the country.[22] In order to solve the issue of electronic payments, it created Sabay Coins, a virtual currency.

Customers now use cash to purchase Sabay Coins at over 1,000 Internet cafes and gaming centres around the country. The currency is also available to clients of certain top-up services and of ABA Bank, Cambodia's tenth largest bank.[23] The coins are stored in the user's account and can be used to buy in-game items and other products online. The games are developed in China and Viet Nam, and then adapted to the Cambodian market. As of August 2013, the company had about 150,000 users.[24]

While large international players, such as eBay and Alibaba, have not yet introduced services that target the Cambodian market, some local retailers have. Little Fashion and Shop168.me, for example, enable their customers to browse and order products online. They use private delivery services in Phnom Penh and receive cash on delivery. Bank wire transfers are also possible, though costly. In 2013, PayGo SEA (Cambodia) Co. Ltd. launched a service called Pay&Go in cooperation with ABA Bank.[25] It allows users to deposit money into an account that can be used for mobile or online payments to participating retailers.

There is a small community of developers looking to seize on the nascent e-commerce market. Some are local offices of outsourcing companies that develop applications for foreign markets. Yoolk, for example, is specialized in producing yellow pages for cities and countries around the world. Other programmers develop products for the local market. VA Kora, a Cambodian who studied and worked in Japan, created a crowdsourced traffic app where users make live updates of the situation in the city's streets. After a six-month development period, his five-person team launched the free app in June 2014 for mobile operating systems iOS and Android. More than 10,000 people have since downloaded the application. There are plans to allow businesses to target app users in their immediate vicinities with special offers.[26]

Although such initiatives indicate a measure of recent progress, much work remains. Government efforts to improve the operating environment have focused on capacity-building and regulation. In June 2014, Cambodia unveiled its ICT Master Plan, aimed broadly at building infrastructure and improving human capacity.[27] Cambodia is part of the e-ASEAN Framework Agreement, established in 2000 to facilitate information infrastructure and promote e-commerce. Nevertheless, as of mid-2014, a draft e-commerce law was still awaiting comments from the Ministry of Post and Telecommunications and the National Bank of Cambodia.[28] The proposed legal framework may improve the regulatory environment while innovative companies may resolve the payment issue, either through electronic means or via cash on delivery. At the same time, an unreliable postal system and low levels of banking penetration remain longer term challenges to e-commerce.

(b) Indonesia: Leveraging social media

About a quarter of Indonesia's population – the fourth largest in the world – is currently online and the number is rising rapidly. It is expected to go from 63 million in 2012 to 139 million by 2015, covering about half the population.[29] The number of online buyers was expected to reach 5.7 million in 2014, providing a potentially large market for e-commerce. The value of e-commerce transactions of $5 billion in 2013 has been forecast to surge to about $25 billion by 2016.[30] The most visited e-commerce site in Indonesia is Amazon.com, followed by two domestically based sites (Lazada.co.id and Bhinneka.co.id) (Payvision, 2014).

A growing number of individuals and small businesses in Indonesia are using social media platforms to sell goods and services. Almost nine out of ten Indonesians who go online also have a social media account, and 87 per cent of Indonesia's Facebook and Twitter traffic comes from mobile devices. Jakarta has been informally dubbed the "Facebook capital of the world" as the platform has some 17 million users in the capital city.[31]

The use of social media is translating into commercial opportunities. A small but growing number of people are offering their goods and services via this channel. For example, Mamahamil.com has offered maternity clothes on Facebook since 2009 and has, since its establishment, developed a sizable client base. Similarly, Saqina, an online fashion retailer that targets Muslim consumers, in 2014 received more than 120,000 "likes" on Facebook.[32] Companies often market themselves over a variety of platforms. In addition to their social media efforts, both Mamahamil and Saqina are operating their own websites, and Saqina also has a presence on Alibaba.com.

There are various challenges to e-commerce in Indonesia, including unreliable logistics and high shipping costs. In addition, payment concerns are rampant. Consumers have shown reluctance to use online payments, mainly for fear of fraud and high rates of cybercrime. In a 2013 survey, fraud was cited by one third of Internet users as a reason for not shopping

online.[33] In 2012, there were about 39 million known cyberattacks in the country. Almost one quarter of all personal computers in Indonesia have experienced a malware attack over a three-month period, the highest percentage in the world (DAKA Advisory, 2013). In regards to e-commerce fraud specifically, Indonesia is number 14 globally.[34] Specific examples are hard to cite as financial fraud remains underreported. While officially reported financial loss from fraud totaled $65,040 in 2011, actual costs were estimated to be in the hundreds of millions (DAKA Advisory, 2013).

To improve perceptions of payment vulnerability or to seize on the opportunity to benefit from it, three telecommunications operators (Indosat, Telkomsel and XL) in December 2013 launched a pilot peer-to-peer electronic transaction service, facilitated by the Central Bank. Although the service has been off to a slow start, it may become popular since only about one fifth of the population has access to a bank account.[35]

The Government is working to introduce regulatory measures to improve e-commerce generally and cybersecurity specifically (UNCTAD, 2013a). The Electronic System Provider and Electronic Transaction Regulation (82/2012) requires anyone who deals with electronic systems and transactions for "public services", such as e-commerce, to register with the Ministry of Communication and Information Technology. The aim is to strengthen and empower capacity-building of national electronic system providers through national certification and standardization.[36] Providers are also asked to have a data centre within the country and use the dot id (.id) domain.

(c) Viet Nam: How motorbikes power online business

In most emerging markets, payment and fulfilment procedures remain barriers to e-commerce. In Viet Nam, very few people use electronic payments. In a 2013 survey of 781 individual Internet users in Hanoi and Ho Chi Minh City, three quarters of those surveyed had used cash payment but only 8 per cent had used some intermediate payment service on e-commerce websites. Some local e-commerce providers have turned the reliance on cash on delivery into an opportunity by making innovative use of motorbike delivery. In a country of 90 million people, there are a staggering 34 million motorbikes.[37]

Motorbikes are not only useful to collect payments, they help to overcome the order fulfilment challenge by circumventing inadequate infrastructure and postal services. Nhommua.com, one of the largest discount sites in the country (it accounted for 14 per cent of all 6,378 vouchers used in Viet Nam in 2013), employed motorbike drivers to collect commissions in cash from vendors, amounting to several million United States dollars per month.[38] Its customers receive the photo identity of the delivery person on every order and vouchers are printed in the shape of business cards using anti-fraud features, such as high-quality 3D holographic stickers.

Some specialized companies have been established to address the delivery and payment function of e-commerce. One of the most well known is Giao Hàng Nhanh, which means "deliver goods quickly".[39] In 2013, the company served more than 800 online merchants of which at least 20 were large B2C e-commerce websites. The company delivered more than 60,000 orders in its first year and handled about 1.5 billion (over $70,000) of transactions per week. It also has a cash payment collection system to prevent fraud.

The need for motorbikes to collect cash may decrease in the future as trust in online payments increases. In a survey of 164 e-commerce enterprises, 48 per cent had introduced an online payment function and more than half of those that had not were intending to.[40] Industry sources expect online payments to rise along with an increase in bank accounts.[41]

From a demand perspective, improved connectivity has accelerated e-commerce uptake. For example, Internet users almost doubled from 24 per cent of the population in 2008 to 44 per cent in 2013.[42] The demand for online services has also been matched by relevant regulation, notably the Law on Electronic Transaction (2005) and the Law on Information Technology (2006).[43] But e-commerce in Viet Nam is still held back by an urban-rural divide. Outside of Hanoi and Ho Chi Minh City, e-commerce continues to lag. The main obstacles in the bottom 10 localities are a lack of human resources and inadequate infrastructure.[44]

3. Latin America: Diverse ecosystem still to reach full potential

In Latin America, B2C e-commerce amounted to some $51 billion in 2013, or about 4 per cent of the global total.[45] Meanwhile, about 8 per cent of the world's online buyers were found in this region (table II.5). The market is dominated by Brazil (box II.4), which accounts for some 38 per cent of the region's total B2C sales, followed by Mexico (19 per cent) and Argentina (8 per

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Box II.4. Data on e-commerce in Brazil

Annual surveys and reports from the Brazilian Internet Committee constitute a rich source of nationally representative statistics on e-commerce. The country boasts a significant e-commerce consumer market. In 2013, 28.7 million Brazilians purchased online (representing one-third of all Internet users). Many Brazilian Internet users connect via mobile devices and are active on social networks. Generally, e-commerce use is higher among young people and people with high incomes, good education and living in urban areas.

Brazilian enterprises use access to the Internet and web presence for interacting with their customers in a variety of ways. In 2013, 96 per cent had access to the Internet, more than half had a website and 39 per cent had online social media profiles. Brazilian enterprises have a greater presence on social networks than European businesses and small businesses in particular seem to rely more on social network profiles than on websites. However, Brazilian enterprises have not yet embraced the full potential of e-commerce. While half of them bought goods and services online only 14 per cent had ventured into selling online.

Source: See http://www.cetic.br/pesquisa/empresas/indicadores (accessed 23 January 2015).

cent).[46] According to internetretailer.com, the top two web merchants in Latin America are B2W and Nova Pontocom (table II.7). In several regards, the potential for e-commerce remains far from fully exploited. For example, the region receives considerably more international deliveries of small packages through the postal system than it exports (table II.3).

Brazil is the most mature and the largest e-commerce market in Latin America. Brazilian consumers use not only e-commerce platforms such as MercadoLibre (box II.5), Submarino (a website of B2W), Rakuten, NovoaPontocom and Despegar (online travel agency), but also compare prices with websites such as Buscapé and group buying platforms such as Peixe Urbano and Groupon. A growing number of bricks-and-mortar retailers have also launched online offerings, such as Americanas (a website of B2W), Casas Bahia and Wal-Mart. Brazilian consumers consult frequently online product reviews and exchange views and opinions on goods and services on social media sites. The most commonly purchased items online are clothes and accessories, cosmetics and perfumes and appliances.[47] An analysis of the top 500 web merchants in the region found that as many as 299 of them were based in Brazil.[48] Brazilian consumers prefer to use credit cards when purchasing online (Payvision, 2014).

Mexico's e-commerce sector is less developed than that of Brazil and Argentina, due to low credit card adoption, unreliable shipping and delivery logistics and a large gap between upper and lower classes. Mexican online shoppers also rely more on mobile devices. In 2013, 17 per cent of all Internet users used mobile devices for online shopping. Meanwhile, cash is still preferred over credit cards (Payvision, 2014).

In the region, Argentina, Chile and Uruguay have the highest percentage of online shoppers among Internet users (near 70 per cent).[49] Prominent local e-commerce platforms are Garbarino (Argentina), Falabella and Cencosud (both in Chile). Nevertheless, consumers from the region have a preference to buy from international platforms. About 50 per cent of the digital buyers in Brazil, Chile, Colombia, Mexico, and Peru prefer international websites.[50] Argentina is at the other end of the spectrum with three out of four consumers opting for local websites.

Box II.5. MercadoLibre

MercadoLibre hosts the largest online e-commerce platform in the region, with operations in Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Peru, Uruguay and the Bolivarian Republic of Venezuela, offering both B2C and C2C solutions. In 2013, it mediated transactions between 5 million unique sellers and 20 million unique buyers, contributing to a gross merchandise volume of $7.3 billion. It offers several types of services: an online marketplace, the MercadoPago payments solution, advertising, classified advertisements, a solution for online stores and an integrated shipping service. MercadoLibre originates in Argentina, where the company still employs approximately half of its staff.

Source: UNCTAD, based on information from http://investor.mercadolibre.com/secfiling.cfm?filingID=1193125-14-78151 (accessed 23 January 2015).

C. CONCLUSIONS

E-commerce has expanded significantly in the past decade and is expected to continue to grow rapidly in the coming years. It is estimated by UNCTAD that global B2B e-commerce amounted to about $15.2 trillion in 2013 and global B2C e-commerce to some $1.2 trillion. Whereas B2B accounts for the overwhelming share of all e-commerce transaction, B2C appears to be growing faster.

The bulk of the world's 1.1 billion digital buyers now reside in developing countries. E-commerce in developing countries has expanded significantly, with fast growth documented particularly in Asia. China has emerged into the global and regional leader in B2C e-commerce. The Middle East and Africa are expected to see their share of global B2C e-commerce rise slightly until 2018, while that of Western Europe and North America is set to decline considerably.

Official and comparable statistics on e-commerce are lacking in most developing and transition economies, making it difficult to assess trends. Available data suggest that cross-border transactions are relatively more important in developing economies than in developed countries, where most e-commerce transactions cater for domestic customers. A number of factors are constraining e-commerce, such as unreliable and lengthy transit times and logistics, high costs of shipment, reluctance to use online payment, and a lack of transparency on delivery and pricing.

The scope for e-commerce is expanding thanks to changes in technology and markets. Rising social networking activity, greater reliance on mobile Internet access (albeit often at reduced speeds) and innovation in delivery services by the posts and private-sector entrants are key features of the evolving e-commerce landscape in developing economies. A number of local e-commerce enterprises, sometimes with the support of foreign investors, are leveraging this potential.

A global comparison of enterprise-level e-commerce activity shows that size matters, with micro and small enterprises being persistently less likely to both buy and sell online. Knowledge from the specialized ICT sector could have an influence on the level of e-commerce activity. The highest share of enterprises buying online was recorded in the computer and related services sector in many different countries.

There is a relatively high degree of market concentration among the approximate global population of more than 1 million enterprises engaged in e-commerce. The top 10 web merchants in different regions account for between 37 per cent (in Europe) and 86 per cent (in Asia) of the total sales of the 500 largest web merchants.

Regional developments differ considerably, although e-commerce is expanding in all parts of the world. In Africa, the expansion is linked to the rapid uptake of mobile solutions for making digital transactions. Both domestic and foreign companies are entering the market, offering tailored e-commerce, payment and delivery solutions. In Asia, the patterns are highly diverse, ranging from the world's largest B2C e-commerce market (China) to countries in which e-commerce is only beginning to emerge. The region is witnessing the rise of global champions as well as smaller enterprises that are catering specifically to domestic markets. Latin America's e-commerce market is dominated by Brazil, Mexico and Argentina. Consumers in the region have a preference to buy from international platforms, reflecting in some countries relatively nascent domestic e-commerce markets.

NOTES

1 See "Digital technology and Internet use, 2013", *Statistics Canada*, 11 June 2014; available at http://www.statcan.gc.ca/daily-quotidien/140611/dq140611a-eng.htm (accessed 5 February 2015).

2 See http://www.kostat.go.kr/portal/english/news/1/12/2/index.board?bmode=read&bSeq=&aSeq=313310&pageNo=1&rowNum=10&navCount=10&currPg=&sTarget=title&sTxt= (accessed 5 February 2015).

3 See "E-commerce в России: поле для роста" (E- commerce in Russia – a potential for growth), *iKS Consulting*, 10 October 2013; available at http://www.iksconsulting.ru/raitings-185.html (accessed 5 February 2015).

4 See http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tin00110 (accessed 5 February 2015). The total amount of firm turnover is not reported.

5 Roughly one third of all e-commerce revenue resulted from website sales (which includes B2C, B2B and B2G transactions) and two thirds from EDI. Within website sales, 41 per cent was related to B2C with the remainder from B2B and B2G.

6 Excluding selected services.

7 See "E-commerce в России: поле для роста" (E-commerce in Russia – a potential for growth), *iKS Consulting*, 10 October 2013; available at http://www.iksconsulting.ru/raitings-185.html (accessed 22 January 2015).

8 See "Cross-border e-commerce makes the world flatter", *bcg.perspectives*, 18 September 2014; available at https://www.bcgperspectives.com/content/articles/transportation_travel_tourism_retail_cross_border_ecommerce_makes_world_flatter/ (accessed 22 January 2015).

9 Regrettably, there are no equivalent data showing international trade in services.

10 See http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/E-commerce_statistics (accessed 22 January 2015).

11 See "Digital technology and Internet use, 2013", *Statistics Canada*, 11 June 2014; available at http://www.statcan.gc.ca/daily-quotidien/140611/dq140611a-eng.htm (accessed 22 January 2015).

12 This indicator refers to private or non-work activities (ITU, 2014b).

13 Other possible activities under this indicator that could imply a payment are related to leisure, such as listening to web radio or watching web television, streaming or downloading media, or downloading software or applications.

14 European data come from the European Community survey on "ICT usage and e-commerce in enterprises"; available at http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/E-commerce_statistics (accessed 23 January 2015). Other studies show that size is a more discriminating factor for e-commerce than enterprise age (Falk and Hagsten, 2014).

15 See http://blog.rjmetrics.com/2014/06/18/how-many-ecommerce-companies-are-there/ .

16 See http://www.statista.com/statistics/274255/market-share-of-the-leading-retailers-in-us-e-commerce/ (accessed 11 February 2015).

17 See http://www.internetretailer.com/2013/02/26/west-meets-east (accessed 11 February 2015).

18 See http://www.internetretailer.com/2014/07/21/amazon-shows-big-opportunity-latin-america-e-commerce (accessed 11 February 2015).

19 See https://twitter.com/WSJ/status/512034975626326016 (accessed 11 February 2015).

20 See http://internet.org/press/introducing-the-internet-dot-org-app (accessed 23 January 2015).

21 See "67% of phones sold smartphones – Safaricom", *humanipo*, 24 April 2014; available at http://www.humanipo.com/news/42985/kenyas-smartphone-penetration-at-67-safaricom/ (accessed 23 January 2015).

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26 See "Techie takes on Cambodia's traffic headaches with app", *Phnom Penh Post*, 30 June 2014; available at http://www.phnompenhpost.com/lifestyle/techie-takes-cambodia%E2%80%99s-traffic-headaches-app (accessed 23 January 2015).

27 See http://www.koicacambodia.org/koica-and-mptc-release-cambodia-ict-master-plan-2020/ (accessed 23 January 2015).

28 See "E-commerce law goes ahead with WB funding", *Cambodia Daily*, 5 June 2014; available at http://www.cambodiadaily.com/business/e-commerce-law-goes-ahead-with-wb-funding-60513/ (accessed 23 January 2015).

29 See http://www.apjii.or.id/v2/index.php/read/content/apjii-at-media/139/2013-pengguna-internet-indonesia-bisa-tembus-82-ju.html (accessed 23 January 2015).

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32 See https://www.facebook.com/saqinaonline (accessed 23 January 2015).

33 See http://www.economistinsights.com/analysis/good-grow (accessed 23 January 2015).

34 See http://blog.siftscience.com/global-e-commerce-fraud/ (accessed 23 January 2015).

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36 See http://www.economistinsights.com/technology-innovation/analysis/future-broadband-south-east-asia (accessed 23 January 2015).

37 See http://wordhcmc.com/component/content/article/49-insider/general/1526-bike-to-the-future (accessed 23 January 2015).

38 See http://www.economistinsights.com/analysis/good-grow (accessed 23 January 2015).

39 See "How Giao Hang Nhanh solves logistics in Viet Nam's growing e-commerce market", *Tech in Asia*, 27 March 2013; available at http://www.techinasia.com/giao-hang-nhanh-solves-logistics-vietnams-growing-ecommerce-market/ (accessed 23 January 2015).

40 See http://www.moit.gov.vn/en/News/531/e-commerce-report-2013.aspx (accessed 23 January 2015).

41 See http://www.vietnam-briefing.com/news/vietnam-online-understanding-vietnams-e-commerce-market.html/ (accessed 23 January 2015).

42 See http://data.worldbank.org/data-catalog/world-development-indicators (accessed 23 January 2015).

43 Several decrees also provide guidance on these laws, including Decree No. 52/2013/ND-CP on e-commerce and Decree No. 72/2013/ND-CP on management, provision and use of Internet services and online information.

44 See http://www.moit.gov.vn/en/News/531/e-commerce-report-2013.aspx (accessed 23 January 2015).

45 Other sources estimate the total value of e-commerce sales at $70 billion in 2013; see http://latinlink.usmediaconsulting.com/2014/04/the-strongest-e-commerce-markets-in-latin-america/ (accessed 23 January 2015).

46 Data from eMarketer.com, as of July 2014.

47 See "The strongest e-commerce markets in Latin America", *latinlink*, 11 April 2014; available at http://latinlink.usmediaconsulting.com/2014/04/the-strongest-e-commerce-markets-in-latin-america/ (accessed 23 January 2015).

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50 See http://etc-digital.org/digital-trends/ecommerce/ecommerce-insights/regional-overview/latin-america/ (accessed 23 January 2015).

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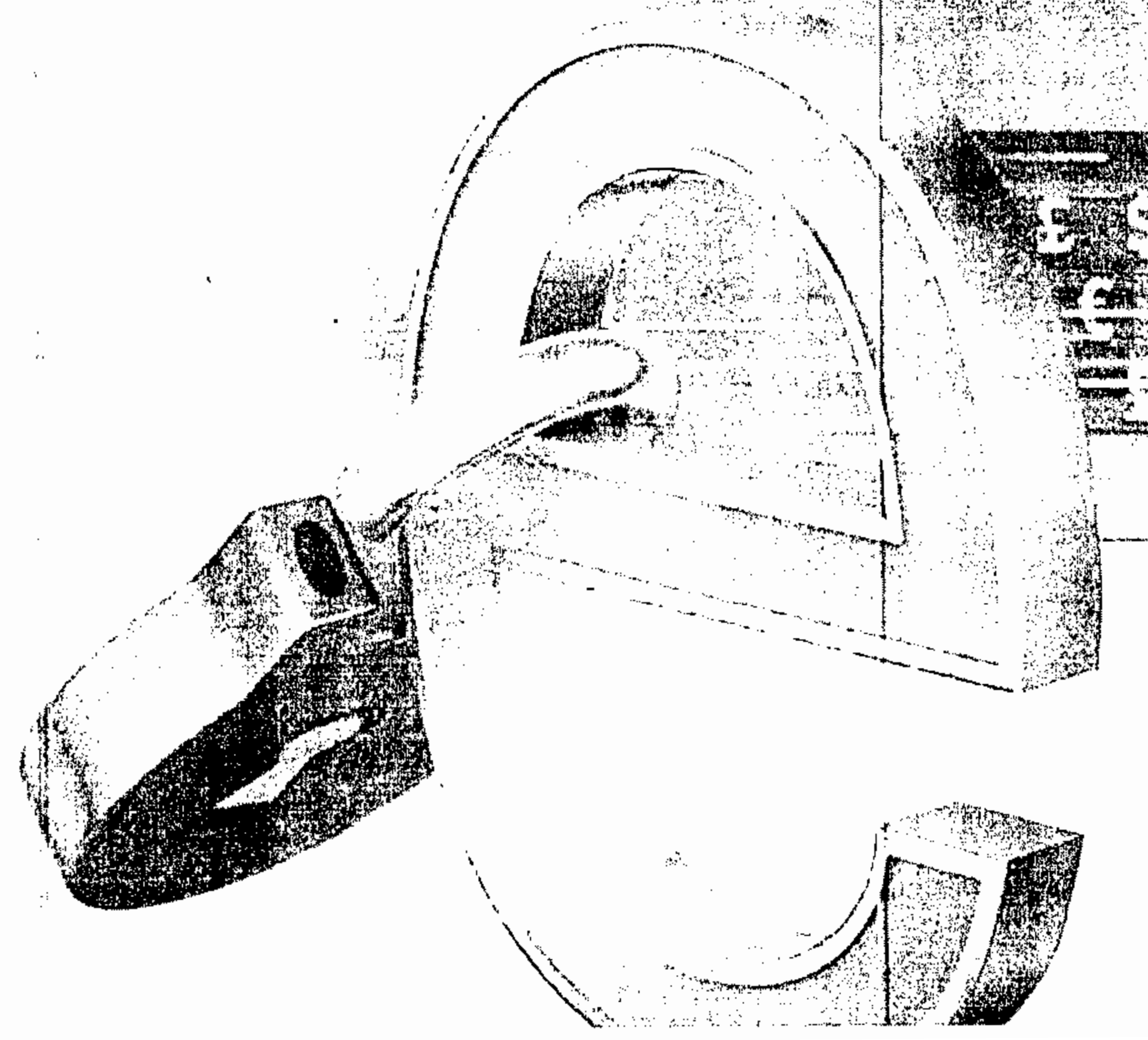
3

MEASURING THE E-COMMERCE READINESS OF COUNTRIES

With a view to assessing the e-commerce readiness of countries, this chapter starts by identifying a set of key facilitating factors that determine the extent to which enterprises and consumers are able to engage in online commerce. While the focus is on B2C transactions, the prerequisites for participating in B2B e-commerce are similiar. Based on the analysis of the factors influencing the scope for e-commerce, the chapter introduces the UNCTAD B2C E-commerce Index covering 130 economies. This new index allows countries to compare their e-commerce readiness against others and indicates their relative strengths and weaknesses concerning different elements of the e-commerce process.



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A. FACTORS INFLUENCING THE SCOPE FOR E-COMMERCE

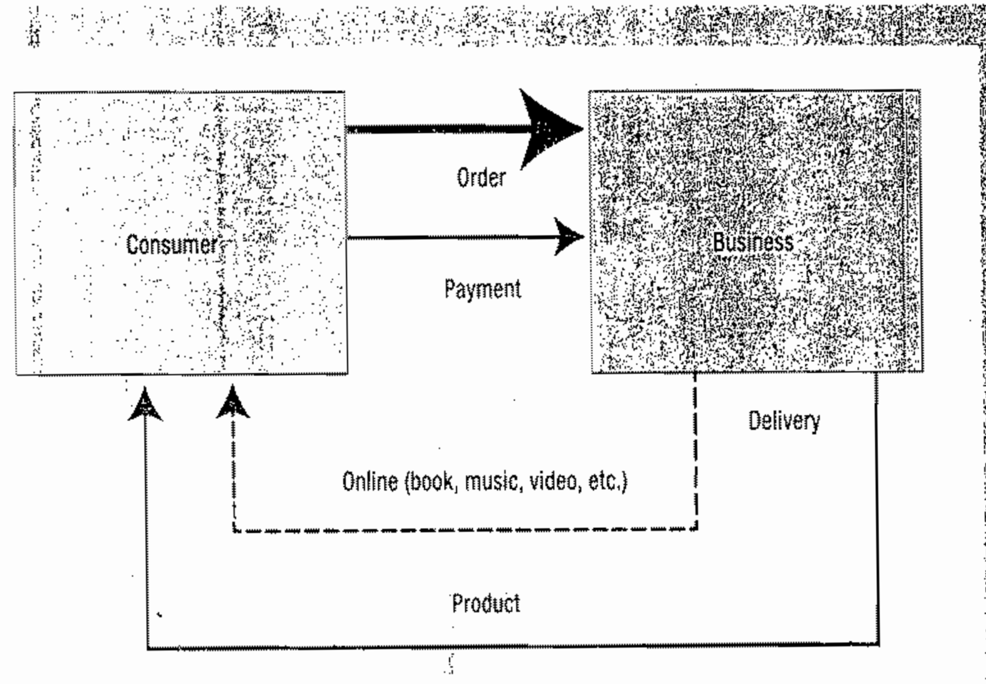
To assess the e-commerce potential in a country, it is useful to consider a simplified e-commerce transaction process (figure III.1). Several facilitating factors influence the scope for implementing successfully such transactions: affordable Internet access, mechanisms for paying for goods and services ordered online, and effective solutions for their delivery (electronically or physically). The legal and regulatory framework, which also influences the extent to which enterprises and consumers are willing to transact online, is discussed in chapter V. Whereas figure III.1 depicts B2C transactions, by replacing the "consumer" with a "purchasing business", it can be applied also to B2B.

1. Internet access

Internet access for both buyers and sellers is needed to conduct online shopping. According to ITU, there were 2.7 billion Internet users across the world in 2013 (ITU, 2013). This implies that almost four in ten people around the world could theoretically make online purchases from different locations, such as home, telecentres or from mobile devices.

The proportion of enterprises that access the Internet is heavily influenced by their size, with larger firms tending to have much higher levels of use than smaller ones (chapter II). On the part of the seller, a web presence for accepting orders is necessary (even if outsourced to a third party). The number of e-commerce websites is a useful indicator of the capabilities for receiving online orders. According to one source, around 110,000 e-commerce sites in the world generated non-neglible revenue in 2014.[1] However, these data are neither regularly collected nor available by country. Given that e-commerce sites require security software, one widely available proxy for the quality of e-commerce infrastructure is the number of secure servers using encryption technology for Internet transactions. There are considerable differences between countries in this area. In 2013, there were over 800 secure data servers per million inhabitants in high-income economies compared to one server per million inhabitants in LDCs (figure III.2).

Figure III.1. B2C e-commerce transaction processes



Source: UNCTAD.

2. Payment systems for online purchases

For all forms of e-commerce, access to competitive payment solutions is a critical facilitator. Few enterprises or people are willing to sell online without some indication of payment (online or offline) by the buyer. In contrast to bricks-and-mortar retail stores, online retailers often require payment to be made before completing the sale. Payment systems are rapidly evolving, expanding the possibilities for consumers and corporate buyers to pay for products bought online. A distinction can be made between account-based payment systems, electronic currency systems and other systems (OECD, 2006, 2012).

Account-based payments systems: These allow payment through an existing personalized account. Six forms of such systems can be noted:

- Credit cards: These are the dominant form of online payment in developed countries;
- Debit card payments: Such payments are directly withdrawn from a bank account. Once funds have been withdrawn, they may be harder to refund;
- Mediating systems: "Electronic money" or "e-wallets". PayPal is one example of mediating payment services. E-shoppers can register with a service provider and provide credit or bank account details as the source of payments. In order to pay, they need only to know the seller's email address, which is verified and linked to the service provider's account. The payment is debited from the e-shoppers personal account without further financial information transmitted to the seller;
- Mobile payment and telephony account systems: Using a mobile device, buyers can purchase products in two principal ways (European Payments Council, 2010): (a) when buyer and seller are both present, payment can be made using contactless radio technologies, such as near-field communication; (b) mobile remote payments are initiated using mobile devices with the transactions carried out either over telecommunication networks (for example, the Global System for Mobile Communications) or the Internet;
- Online banking: Consumers using this facility are redirected from a merchant's webpage to the consumer's own bank's online banking site.

Electronic currency systems: These allow payment as long as the payer has an adequate amount of electronic currency. This type has two forms: (a) smart card systems, which are mainly used to pay small amounts within organizations (for example, for

Figure III.2. Distribution of secure Internet servers per 1 million people, 2013

Source: World Bank (see http://data.worldbank.org/indicator/IT.NET.SECR.P6; accessed 26 January 2015).
Note: Regions refer to developing economies only. "Secure servers" are servers using encryption technology in Internet transactions.

photocopying); (b) online cash systems, which are software-only electronic money instruments based on "signed money". They usually work via prepaid cards and arrangements differ. Digital currencies or crypto-currencies such as Bitcoin are gaining traction. They are not backed by Governments or central banks, nor linked to real-world currencies (WorldPay, 2014).

Other payment systems include, for example (OECD, 2012), automated mechanisms for bill payments; online wallets, in which case the user must register with a payment provider and upload money using a debit or credit card; escrow services, where a third-party intermediary is responsible for holding a buyer's payment until the buyer receives and approves the merchandise; and cash-on-delivery. In the case of B2B transactions, enterprises are increasingly moving to electronic funds transfers.

Credit cards still account for the lion's share of retail e-commerce settlements (WorldPay, 2014). However, it is expected that by 2017 other payments will make up for the majority of all retail e-commerce payments, with "e-wallets" set to represent more than 40 per cent of the total. Usage patterns vary greatly. Most developed countries rely on accounts-based systems. In North America and Europe, credit cards remain the main method, followed by mediating systems (e-wallets) (table III.1). Among developing countries, there is significant variation, but credit cards account for less than half.

Table III.1. E-transactions value, by payment methods, 2012, by region (per cent)

Region	Credit cards	E-wallets	Direct debit	Cash on delivery	Bank transfer	Other
United States and Canada	71	18	2	1	1	7
Europe	59	13	5	5	8	11
Latin America	47	10	4	8	13	18
Africa and Middle East	34	5	0	48	3	10
Asia and Oceania	37	23	1	11	14	14
World	57	17	2	5	7	12

Source: WorldPay (2014).
Note: Mobile payments included in "other".

According to WorldPay, cash on delivery is used in almost half the value of e-commerce transactions in Africa and the Middle East (table III.1). Other sources put the share as high as 70–80 per cent in the Middle East.[2] In India, as well, such payments still account for 50–80 per cent of all online transactions.[3] Cash on delivery can be seen as a low risk option for consumers to enter e-commerce. However, it is a higher risk option for producers. Reliance on cash on delivery can act as an inhibitor of e-commerce growth due to people not paying when the product is delivered and to the lag between product dispatch and payment.[4]

Mobile payments accounted for only 1 per cent of the value of e-commerce payments, a figure forecast to rise to 3 per cent by 2017. However, they are more important in countries characterized by limited Internet use but well-functioning mobile money systems. In several African countries, mobile solutions represent the most viable infrastructure for e-services due to high degrees of financial exclusion, limited availability of fixed lines, cost of fixed lines and cost of the card infrastructure (Innopay, 2012). In Kenya, for example, online purchase payments from mobile phones accounted for 19 per cent of total e-commerce transaction value in 2012 (WorldPay, 2014). In October 2013, the value of mobile payment transactions stood at $68 million as compared with only $12 million for card payments.[5] The success of mobile money has led to the development of many new payment services (see chapter IV).

Low levels of credit card usage in developing regions are related to limited ownership of such cards. In 2011, less than 5 per cent of people aged 15 years and older had a credit card in Africa and South Asia, compared with almost half of that age group in high-income economies (table III.2).

In view of the cash-based culture in many countries with a significant number of unbanked people and limited experience with electronic payments, alternative payment systems have emerged. In Brazil, for example, offline payment forms have been created by companies such as the online gaming developer Vostu,[6] which formed a partnership with 150,000 physical points from newspaper kiosks to cybercafes to sell credits for their games. "Boleto Bancario" ("bank payment slip") is another widely used payment solution in Brazil. It allows customers to purchase goods online using a slip that customers can print from the website and pay by cash at a bank, hence enabling payment offline.[7] Micropayment and small payments are also gaining traction in developing

countries. They are designed to suit services or content with low unit values. Solutions like M-Coin (launched by TIWWE), Zond (owned by eBay) and Boku (available in more than 60 countries) charge the payment to a user's mobile phone bills.

3. Delivery systems

The scope for e-commerce is influenced by the quality of product delivery. Many consumers turn to e-commerce because of the desirability of downloading digital products or the convenience of receiving physical products at their homes. Weaknesses in the delivery infrastructure can seriously hamper e-commerce, especially for goods.

Four general delivery modes can be distinguished for B2C:

- Online delivery of digital products such as books, videos, music and computer software: For this type, the quality of the Internet connection is a key factor. An analysis of panel data over 10 years from 43 countries found broadband penetration to be among the most important variables explaining cross-national variability in e-retail spending (Kshetri et al., 2014);
- Delivery of physical product: When a good is ordered it can be delivered to the buyer through the postal/parcel express network or seller's own delivery network;
- Buyer goes to pick up physical product: This is generally at the store the product was ordered from or a nearby branch if ordered through a central retail website. Some retailers have "lockers" in certain locations where the buyer can go to pick up the merchandise. Sometimes the item is delivered to a post office/parcel office for pick up, either because there is no home delivery available or the package requires a signature;
- Buyer "goes" to the service ordered: This is typically the case for online travel purchases where buyers purchase an airline trip, car rental, hotel accommodation or event tickets.

Digital delivery can happen in several ways: instant and permanent download to the user's computer, limited download (for example, a rental product such as a video that expires after a certain time), streaming or cloud storage. The digital delivery process is affected by the quality of a buyer's Internet connection.[8] In the case of small digital products (for example, a song or a book), relatively slow download speeds may suffice. Larger digital products, such as downloading or streaming videos, require more bandwidth. The video streaming

Table III.2. Type of accounts and payment methods, by region, 2011, share of population aged 15 or more (per cent)

Regions/groups	Debit card	Account at a formal financial institution	Checks used to make payments	Electronic payments used to make payments	Mobile phone used to pay bills	Mobile phone used to receive money	Mobile phone used to send money	Credit card
High income economies	61.4	89.5	33.4	55.2	[illegible]	[illegible]	[illegible]	49.8
Other economies								
East Asia and Oceania	34.5	54.9	1.7	6.1	1.3	1.2	[illegible]	6.6
Europe and Central Asia	36.4	44.9	3.7	7.8	3	2.7	2.5	16.2
Latin America and Caribbean	28.8	39.3	3.9	10.3	1.8	1.9	0.8	18.4
Middle East and North Africa	9.1	17.7	4.1	2.2	1	2.4	1.3	2.4
South Asia	7.2	33	6.6	1.6	2	1.9	0.8	1.6
Sub-Saharan Africa	15.5	24	3.3	4	3	14.6	11.2	2.9
World	30.4	50.5	9.4	14.5	2	3	2.2	14.8

Source: Global Financial Inclusion Database.

Note: Electronic payments refers to the percentage of respondents who used electronic payments (payments that one makes or that are made automatically, including wire transfers or payments made online) in the past 12 months to make payments on bills or to buy things using money from their accounts.

service Netflix quantifies the speeds required to use its service.[9] They range from 0.5 megabits per second (Mb/s), the minimum required connection, to 5 Mb/s, the recommended speed for high definition (HD) quality. According to average download speeds compiled by Ookla Net Index,[10] all economies could support the minimum required broadband connection speed, while 71 per cent could support HD quality (table III.3). In addition to speed, latency is also critical. It affects countries where streaming services are not hosted locally and must be accessed over slower international links.

The postal system plays a key role in e-commerce logistics. It often remains the most cost-effective way to send parcels. In the past decade, the handling of parcels has become increasingly important for the postal system in terms of volume and revenue. While the number of letters sent domestically and internationally have declined significantly, parcel traffic has surged by more than 30 per cent since 2000, partly due to e-commerce (figure III.3). In Latin America and the Caribbean, and in developed countries, over one third of the total revenues of posts were generated by parcel post in 2011 (UPU, 2014).

Table III.3. Speeds needed for video streaming, 2013

Speed (Mb/s)	Comment	% of economies
0.5	Required broadband connection speed	100
1.5	Recommended broadband connection speed	96
3	Recommended for SD quality	86
5	Recommended for HD quality	71

Source: Adapted from Netflix, NetIndex (http://www.netindex.com/download/allcountries/; accessed 26 January 2014).
Note: Based on data for 192 economies with broadband speed data using figures from May 2014.

The greatest flexibility in delivery of goods is the ability to have them shipped to the buyer's home. According to UPU data, over 90 per cent of the population in developed economies, transition economies and Asia can receive parcels with home delivery (figure III.4).[11] In Africa and Oceania, the corresponding figure is below 40 per cent. Another option is to have parcels delivered to a post office from where the buyer can then retrieve them. Data from UPU show

Figure III.3. Letter and parcel traffic handled by the postal system, 2000–2012 (index 2000 = 100)

160
140
120
100
80
60
40
20
0
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
Number of letters (domestic)
Number of parcels (domestic)
Number of letters (international)
Number of parcels (international)

Source: UPU.

that most of the population in Africa and Oceania retrieve their mail from a post office. Over 10 per cent of the population in those regions does not have access to postal delivery or pickup. Across the world, only about 4 per cent of the population lack access to postal services.

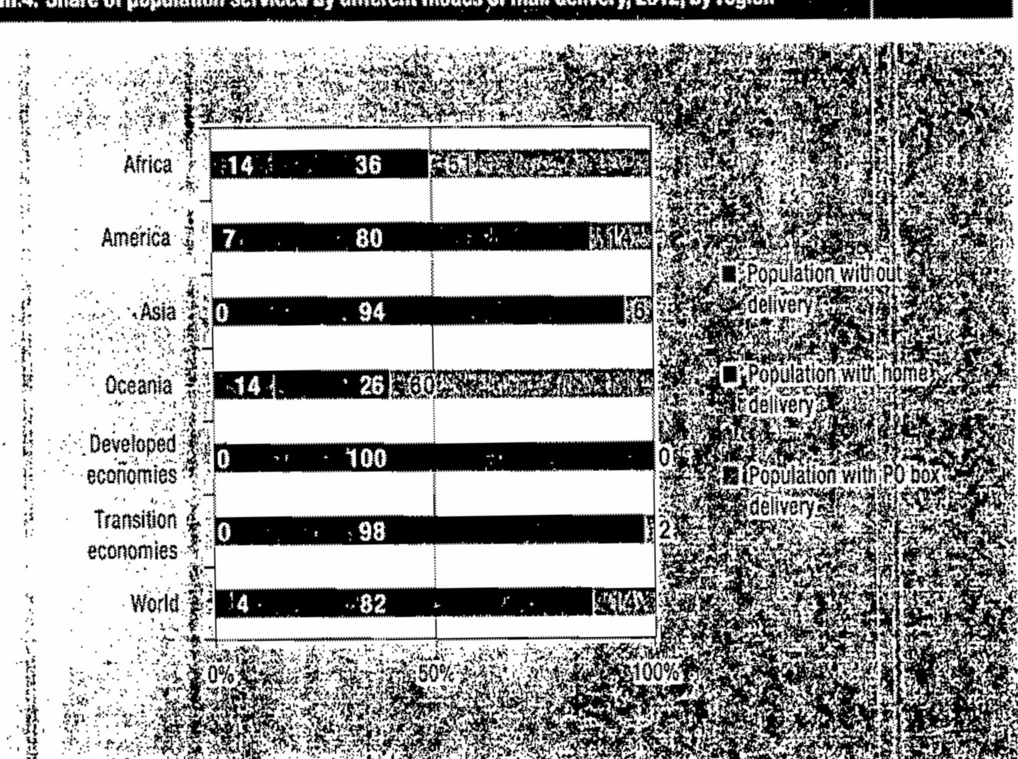
Many postal systems need to become more efficient and create products to meet the needs of e-commerce. Nevertheless, the postal network remains the most important national infrastructure for universal access for urban dwellers and, more importantly, for consumers and producers located outside the urban areas. The reach of the national postal network in most countries and its ability to connect to the wider international postal network makes it a cost effective method for connecting all citizens and businesses to the global e-commerce economy.[12]

Poor logistical infrastructure remains a problem for enterprises engaging in e-commerce in many economies. While larger businesses, like the online retailer, Ozon.ru,[13] may choose to build their own distribution networks, this option is out of reach for micro and small businesses that may need to explore other innovative solutions, such as the motorbike delivery system used in Viet Nam (chapter II). Out-of-home delivery – involving collection points, delivery at work, parcel lockers and in-store pickup – is one option to increase the attractiveness of e-commerce in developing countries.

B. THE UNCTAD B2C E-COMMERCE INDEX

There are few benchmarks of country e-commerce performance. Those that exist suffer from a lack of public availability, scope or consistent methodology, as well as limited geographical coverage.[14] This section presents the UNCTAD B2C E-commerce Index, which is based on indicators related to the factors discussed above (table III.4 box III.1). It reflects the underlying capability of countries to carry out B2C e-commerce. It does not consider exogenous factors such as income, digital literacy and laws. While the legal and regulatory framework influences the degree of trust in online commercial transactions, it is difficult to assign a relevant numerical value to its quality. This dimension is therefore not included in the Index. However, the

Figure III.4. Share of population serviced by different modes of mail delivery, 2012, by region



Source: Adapted from UPU Postal Statistics database.
Note: Geographical regions refer to developing countries only.

Box III.1. Methodology of the UNCTAD B2C E-commerce Index

The selection of indicators for the Index was made in several steps. Firstly, proxy indicators were assigned to the various components needed to carry out an e-commerce transaction, including payment and delivery. This includes access to the Internet by the consumer, a web presence to receive the order, a payment method and a delivery method. Secondly, statistical analysis was performed by regressing these indicators on the percentage of individuals who have made an online purchase for 77 countries where such data were available. Indicators with the highest statistical significance were then selected to create the Index. These indicators are shown in table III.4. The results of the regression show a good fit, with a coefficient of determination of 0.85. All indicators except secure servers are in a normative form where 100 is the maximum value. The data on secure servers were normalized to 100 by rescaling the values. The values of the indicators were then averaged to obtain the index value. The index comprises 130 economies with all available indicators using data for 2013 (or latest year available). The full list of countries is provided in annex 1.

Source: UNCTAD.

extent to which countries have relevant laws in place is examined in chapter V.

Several observations can be made about the highest-ranked economies (table III.5). Firstly, most are developed countries. Secondly, most are relatively small and/or distant from major market centres. Smaller physical retail markets appear to stimulate online shopping including a significant amount from abroad. The top 10 ranked developing economies in the Index are identified in table III.6. They are all upper-middle and high-income economies, six of which are from Asia and the remaining four from Latin America.

Table III.4. Indicators included in the UNCTAD B2C E-commerce Index

Indicator	Source/note
Percentage of individuals using Internet	ITU, Eurostat and national surveys, 2013, 216 economies
Credit card (% age 15+)	World Bank Findex survey, 2011; 149 economies
Secure Internet servers (per 1 million people)	World Bank, 2013; 209 economies
Percentage of the population having mail delivered at home	UPU, 2012; 168 economies

Source: UNCTAD.

Table III.5. Top 10 countries in the UNCTAD B2C E-commerce Index, 2014

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	UNCTAD B2C E-commerce Index value	Rank
Luxembourg	100	99	72	95	91.7	1
Norway	100	97	60	96	88.3	2
Finland	100	97	64	92	88.1	3
Canada	100	93	72	83	87.1	4
Sweden	100	96	54	95	86	5
Australia	100	95	64	83	85.5	6
Denmark	100	99	45	95	84.7	7
Republic of Korea	100	99	56	82	84.3	8
United Kingdom	100	94	52	91	84.2	9
Israel	100	82	80	73	83.9	10

Source: UNCTAD; see annex 1.

Table III.6. Top 10 developing economies in the UNCTAD B2C E-commerce Index, 2014

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD B2C E-commerce Index value	Rank
Republic of Korea	100	56.4	82.1	98.6	84.3	8
Hong Kong (China)	99.99	58.1	74.2	89.2	80.4	18
Singapore	100	37.3	72	89	74.6	26
Bahrain	100	19.3	73	77.2	67.4	34
Turkey	97	45.1	46	68.9	64.2	38
Chile	94	22.8	61.4	73.9	63	39
Uruguay	92.8	27.1	58	72.1	62.5	40
Trinidad and Tobago	93	15.3	59.5	73.8	60.4	43
Malaysia	93	11.9	63.6	71.1	59.9	45
Brazil	80.7	29.2	58	69.9	59.5	47

Source: UNCTAD; see annex 1.

Table III.7 shows the indicator values for the data set. In general, rates of population covered by postal services and secure Internet servers are higher than individual access to the Internet and to credit cards. Furthermore, in the case of Internet use and secure servers, the medians are fairly close to the means. On the other hand, the significant difference between the median and mean for postal delivery highlights that while over half the countries cover more than 90 per cent of their population with home postal services, around a third provide coverage to less than half their population. In the case of credit card use, only 17 countries have a penetration of more than 50 per cent, and in 62 countries, penetration is below 10 per cent. Credit card penetration has the lowest average and maximum scores across the four indicators, suggesting that globally, payment is the one area meriting the most attention.

Table III.7. Global values for the UNCTAD B2C E-commerce Index

	Home postal delivery (% of population covered)	Credit card (% aged 15+)	Internet use (% of population)	Secure servers (normalized value)
Average	69	18	44	63
Minimum	0	0	1	1
Maximum	100	80	96	100
Median	93	10	45	64

Source: UNCTAD.

The Index allows countries to compare their e-commerce readiness with that of others and also indicates their relative strength and weaknesses with regard to different elements of the e-commerce process (for example, Internet access, e-commerce sites, payment, and delivery). At the regional level, there is considerable variation among the four indicators (table III.8). For example, transition economies display a relatively high degree of home postal delivery, whereas credit card penetration is low compared with the developing regions (except Africa). On the other hand, in Latin America and the Caribbean, and in Asia and Oceania, improving the coverage of postal home delivery appears to be particularly important. In Africa, performance is hampered by low overall Internet penetration levels compared with other regions.

The UNCTAD B2C E-commerce Index value is strongly positively correlated to the variation in the share of individuals shopping online (figure III.5). This share can also be contrasted with that predicted by the Index. This was done by regressing the independent variables (that is, postal delivery coverage, credit card penetration, Internet penetration and secure servers per capita) against the percentage of the population that shop online for the countries for which data are available. The resulting equation coefficients were then applied to the independent variables for all countries. As indicated in table III.9, relatively large countries tend

Table III.8. Regional average values in the UNCTAD B2C E-commerce Index

	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD B2C E-commerce Index value
Africa	27	4	13	43	22
Asia and Oceania	60	14	34	57	41
Latin America and the Caribbean	70	12	44	67	48
Transition economies	94	9	45	59	52
Developed economies	98	42	79	90	77

Source: UNCTAD.
Note: Includes all countries for which data for any indicator is available.

to perform above the expected level. This may partly reflect benefits from economies of scale and scope at the domestic level, partly the role of well-developed localized online shopping sites, such as Ulmart in Russia with around $1 billion in online sales in 2013,[17] and China's Alibaba Group with 279 million active buyers as of June 2014.[18] On the other hand, those not performing as well as expected tend to be located in Central Europe, North Africa and Latin America. Scoring among the bottom 10 economies in table III.9 indicates considerable potential for increasing the uptake of e-commerce.

Figure III.5. Correlation between the UNCTAD B2C E-commerce Index and the share of individuals shopping online, 2013

Source: UNCTAD.

Table III.9. Top and bottom 10 countries by difference between predicted and actual share of population buying online, 2014

	Top 10					Bottom 10				
		Online buyers as a share of population (%)					Online buyers as a share of population (%)			
	Economy	Predicted value	Actual value	Absolute difference	% difference	Economy	Predicted value	Actual value	Absolute difference	% difference
1	Thailand	0.38	1.8	1.42	*380*	Armenia	6.9	0.5	-6.4	*-92*
2	China	6	20	15	*262*	Ecuador	2	0.2	-1.7	*-88*
3	Russian Federation	9	21	12	*130*	Georgia	7.4	1	-6.4	*-87*
4	Belarus	4.5	7.9	3.4	*75*	Egypt	4.1	0.6	-3.5	*-85*
5	United Kingdom	46	71	25	*56*	Argentina	11.5	2.8	-8.7	*-76*
6	Germany	39	60	21	*54*	Mexico	6.2	1.8	-4.4	*-71*
7	France	30	44	14	*46*	Morocco	5.8	2.1	-3.7	*-64*
8	South Africa	2.2	3.1	0.9	*42*	Uruguay	14.2	5.2	-9	*-63*
9	Brazil	14	19	5	*39*	The former Yugoslav Republic of Macedonia	13.5	5.4	-8.1	*-60*
10	Australia	47	63	16	*35*	Colombia	6.4	2.6	-3.8	*-60*

Source: UNCTAD.

Note: The predicted value is calculated using the coefficients generated by regressing postal delivery coverage, credit card penetration, internet penetration and secure servers per capita against the percentage of the population that shops online.

C. CONCLUDING REMARKS

The UNCTAD B2C E-commerce Index, which will be updated annually, can serve as a useful tool for countries wishing to assess their readiness to engage successfully in online commerce. It allows countries not only to compare their performance against others but also indicates where they are relatively strong and where there may be a need for improvement.

The analysis suggests that the highest-ranked economies are relatively small, rich and often located at some distance from major markets. Meanwhile, in terms of actual levels of online shopping, countries with relatively large populations – such as China, the Russian Federation and Brazil – are among those that are performing better than what would be predicted by the Index. This may suggest that a certain scale is helpful for e-commerce success, as is the presence of localized e-commerce platforms.

Globally, credit card penetration has the lowest average value among the four indicators in the Index. Most retail e-commerce payments are still made via credit card but the role of other methods is forecast to expand in the future. As a result, credit card use may become a less important determinant when alternative payment solutions gain traction. This will partly hinge on how successful Governments are in fostering an enabling environment for such payments.

For most developing countries, areas for improving e-commerce usage include enhancing parcel delivery and payment mechanisms, particularly when Internet penetration has reached a certain threshold. In the case of sales of physical goods, a lack of postal home delivery can represent a barrier to the uptake of e-commerce, although other methods, such as picking up orders at the post office or shops, are also expanding. This gap is spurring alternatives for home delivery such as courier services either provided by online vendors or generic services competing with the traditional postal services. For the delivery of merchandise bought online, an important issue is cost-effective accessibility for the entire population. The proliferation of private, proprietary, closed-delivery networks, whilst initially providing a catalyst for e-commerce growth, also introduces limitations of scale for universal access, especially for underserved communities. This is where a national infrastructure, such as the postal network, is particularly important.

NOTES

1 "How many ecommerce companies are there?", *The Data Point*, 18 June 2014; available at http://blog.rjmetrics.com/2014/06/18/how-many-ecommerce-companies-are-there/ (accessed 26 January 2015).

2 See "PayPal Insights e-commerce report reveals trends in mobile, travel in the Middle East", *wamda.com*, 23 September 2013; available at http://www.wamda.com/2013/09/paypal-e-commerce-report-middle-east (accessed 26 January 2015); and "Counting on cash on delivery", *kippreport*, 8 September 2013; available at http://www.kippreport.com/fcs/counting-on-cash-on-delivery/ (accessed 26 January 2015).

3 For the larger "e-retailers" in India, this payment method is available in 600 cities and towns, and has helped merchants acquire first-time customers; see "Cash-on-delivery: Necessary evil", *businesstoday*, 16 February 2014; available at http://businesstoday.intoday.in/story/cash-on-delivery-impact-on-e-commerce-companies-customers/1/202680.html (accessed 26 January 2015).

4 See "Cash on delivery the biggest obstacle to e-commerce in UAE and region", *The National*, 14 May 2014; available at http://www.thenational.ae/blogs/plugged-in/cash-on-delivery-the-biggest-obstacle-to-e-commerce-in-uae-and-region (accessed 26 January 2015).

5 See "Use of plastic money surges to 11.6 million", *Standardmedia.co.ke*, 13 December 2013; available at http://www.standardmedia.co.ke/business/article/2000099980/use-of-plastic-money-surges-to-11-6-million (accessed 26 January 2015).

6 Over 50 million registered users; Vostu, founded in 2007, is the largest gaming company in Latin America; see http://www.vostu.com/es/#/vostu (accessed 10 August 2014).

7 See http://thenextweb.com/la/2011/08/29/how-e-commerce-is-growing-in-brazil/#comments (accessed 2 June 2014).

8 For more on quality of broadband networks see UNCTAD (2013b).

9 See https://help.netflix.com/en/node/306 (accessed 26 January 2015). Netflix also compiles a speed index of Internet service providers for the countries it operates in; see http://ispspeedindex.netflix.com (accessed 26 January 2015).

10 See http://www.netindex.com/download/allcountries/ (accessed 26 January 2015).

11 In Denmark, for example, the main delivery choice among online shoppers is having packages delivered to the home by the national postal agency (reported by almost half of online shoppers), and another 7 per cent picked up their parcels at the postal office (FDIH, 2012).

12 See, for example, quote by the Chief Executive Officer of Konga.com at the UPU E-commerce Forum 2014; available at https://www.youtube.com/watch?v=pVl_JP5T77c (accessed 26 January 2015).

13 Opened in 1998 and one of the first Russian e-commerce projects in the B2C segment; see http://www.ozon.ru/context/detail/id/5085342/ (accessed 19 June 2014). Ozon.ru has established 2,100 pickup points in 130 cities and plans to establish another 2,000 by 2015. It has built a second, 16,200-square-metre warehouse in Yekaterinburg to fulfil customer orders outside of Moscow and St. Petersburg; see http://www.atkearney.com/consumer-products-retail/ideas-insights/featured-article/-/asset_publisher/KQNW4F0xInID/content/online-retail-is-front-and-center-in-the-quest-for-growth/10192 (accessed 19 June 2014).

14 For example, Kearney's Global Retail B2C E-commerce Index covers 30 economies (Kearney, 2013) and the Forrester Readiness Index, eCommerce, 2014, covers 55 countries (Forrester, 2014).

15 The normalization was done using the following equation: log (x) – log (min(x))/log (max(x)) – log (min(x)).

16 Some extraneous factors, such as digital laws and income, were also analysed for their impact on online shopping behaviour but were found to have little statistical significance.

17 See http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/10729147/Russias-biggest-internet-company-eyes-London-IPO.html (accessed 26 January 2015).

18 See http://www.alibabagroup.com/en/ir/financial (accessed 26 January 2015).

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4 E-COMMERCE BY SMALL AND RURAL ENTERPRISES IN DEVELOPING COUNTRIES

Micro and small enterprises in most countries tend to lag behind their larger counterparts in online buying and selling (chapter II). Rural enterprises similarly trail behind their urban competitors, for various reasons. This chapter looks at different options for micro and small businesses to engage in e-commerce, making use of emerging platforms and solutions. It then considers the case of rural e-commerce by comparing the diverse experience of three countries in Asia.

A. OPTIONS FOR MICRO AND SMALL ENTERPRISES TO ENGAGE IN E-COMMERCE

Micro and small enterprises face various barriers to the adoption of e-commerce, such as lack of skills in identifying their e-commerce needs and potential benefits, and how to engage in it (Sandberg and Håkansson, 2014). At the same time, options are expanding for them to gain an online presence that can be used to market their goods and services to potential buyers. Traditional obstacles related to the need for having in-house resources, IT equipment and expertise to establish and maintain a web presence have been lowered with the introduction of new platforms and solutions. In the following sections, different options for creating an online presence and for handling payments and order fulfilment are discussed and evaluated. As will be shown, in many developing countries small businesses still face barriers when wanting to leverage some international e-commerce platforms and solutions.

1. Using existing online marketplaces

A growing number of third-party marketplaces are available for the marketing and sale of products online. Some provide the full range of services – payment processing, customer service, shipping, return processing and delivery – while others act as an online forum for buyers and sellers to meet. In China, JD.com (ir.jd.com), the largest B2C marketplace in that country, offers payment processing, customer service, shipping and return using its own nationwide logistics infrastructure for order fulfilment. By contrast, the most visited e-commerce site in Kenya, OLX (olx.co.ke), allows sellers to post advertisements to reach potential buyers, but does not facilitate transactions between them.[1] In countries with expanding e-commerce markets, domestic and international platform providers are competing head to head (box IV.1).

The primary focus of the marketplace, be it B2B (box IV.2), B2C or C2C, affects the kind of customers that the seller might reach and the set of features that are available. Both B2C and C2C marketplaces may be relevant when targeting the consumer segment. Most B2C platforms require sellers to be a formal,

Box IV.1. Platform competition in the Philippines

The Philippines boasts a rapidly expanding market for e-commerce, with online transactions currently valued at about $1 billion.[a] This has led both local and international platform providers to offer innovative e-commerce solutions to small businesses.

Among domestic C2C websites, sulit.com.ph is one of the most popular with 13.7 million visitors as of March 2013.[b] It was founded as a general classified advertisements website in September 2006. After a venture into vertical markets, such as cars.sulit.com.ph and realestate.sulit.com.ph, it merged with the OLX network in 2014. Another domestic platform, Uniqly (uniqly.net), offers a complete e-commerce solution against a 5 per cent commission on transactions. It allows customers to create an online store across multiple platforms and helps them manage products, orders and payments via credit card, PayPal or bank deposit. The company also helps with order fulfilment. It has partnered with a delivery company to ship products from the merchant to the customer. Uniqly also integrates with various social media websites.

Among the foreign providers, eBay has been in the Philippines since 2007 and has expanded by launching the group buying discount site, Kuponan. AliExpress, which is part of the Alibaba Group, is leveraging its global platform to allow Philippine shoppers to purchase products directly from China. On the supply side, it has more than 90,000 sellers in the Philippines itself. Lazada.com.ph, another major online retailer, is owned by Rocket Internet (Germany). A recent entry in the Philippines is Singapore-based startup, TackThis! (tackthis.com.ph).

Competition among the platform providers benefits individuals and small businesses. Because most providers operate on an advertising or commission basis, online merchants can use several simultaneously. Hence, there is an opportunity to establish a presence on a global platform to reach customers overseas while using a domestic provider to target local demand. Many companies also establish their own websites to supplement their social media and platform presence.

Source: UNCTAD.

[a] "Is it time to be bullish on e-commerce in the Philippines?", *Huffington Post*, 7 October 2014, available at http://www.huffingtonpost.com/jonha-revesencio/is-it-time-to-be-bullish-_b_5557436.html (accessed 27 January 2015).

[b] See "10 popular e-commerce sites in the Philippines", *TechinAsia*, 18 July 2013, available at http://www.techinasia.com/10-popular-ecommerce-sites-philippines/ (accessed 27 January 2015).

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Box IV.2. B2B online marketplaces – opportunities for micro and small enterprises to participate in international supply chains

Online B2B marketplaces can provide opportunities for suppliers in developing countries to access the export market and international supply chains. Examples of dedicated B2B sites include India's largest online B2B marketplace for small and medium-sized businesses, IndiaMart.com;[a] EC21.com – a B2B marketplace of the Republic of Korea with 2.5 million members;[b] and Kenya.tradekey.com with 39,732 registered members.[c] Alibaba.com (China) provides a range of services to facilitate sourcing Chinese products from overseas.

Source: UNCTAD.

[a] See http://www.indiamart.com/corporate/about-us.html (accessed 19 July 2014).
[b] See http://www.ec21.com/html/ec/help/help_01.html (accessed 19 June 2014).
[c] See http://kenya.tradekey.com/ (accessed 19 July 2014).

registered enterprise, while C2C marketplaces do not. For example, only registered enterprises are allowed to sell on the India-based B2C online marketplaces Flipkart.com[2] and Snapdeal.com.[3] By contrast, on eBay.in (a C2C online marketplace), there is no such requirement. For informal microenterprises in developing countries, the C2C option may be more relevant. At the same time, using a C2C platform may involve higher risks, due to the physical separation and uncertainty about sellers' profiles (Xu et al., 2010).

The geographical focus of the marketplace is important. International online marketplaces may be open to international sellers only, to international buyers only, or to both. For example, Aliexpress.com (box II.2) enables sellers only from mainland China[4] to sell goods to buyers abroad, mostly in Brazil, China, India, the Russian Federation and the United States.[5] By contrast, Etsy.com,[6] an international online marketplace for handmade and vintage goods, is open to both international buyers and sellers.[7] As will be discussed in the next section, however, merchants in developing countries are not always able to sell their products on international e-commerce platforms. Some marketplaces cater to regional buyers. For example, MercadoLibre is the largest online marketplace in Latin America, operating in 12 countries in that region (box II.5). Meanwhile, others cater primarily to the domestic market. As much as 90 per cent of the traffic of Taobao.com comes from China, for example, and 93 per cent of visitors to Lamoda.ru are from the Russian Federation.[8] For domestic producers, some Governments support national postal operators to offer e-commerce platforms for local producers.[9]

Online marketplaces often specialize in certain types of products, such as physical goods, digital products or ICT-enabled services. For instance, Cheki is a "vertical classifieds" portal for car listings with a presence in 10 African countries (box II.3). The horizontal classified portal, Envato.com (Australia), meanwhile, markets digital products such as website themes, templates, photos, music and videos.

Platforms such as Freelancer.com and Elance.com provide opportunities for professionals in developing countries to provide professional services online to customers around the world. Elance.com has more than 2.3 million "elancers"[10] in over 170 countries.[11] As of 2013, the highest number of professional skill providers on this platform came from the United States (715,964), India (359,476), Pakistan (113,219) and the Philippines (89,207).[12] Among LDCs the platform had, for example, 95 freelancers active in Afghanistan and 127 in Rwanda.[13] Such platforms also create new opportunities for women entrepreneurs to engage in e-commerce (box IV.3).

Box IV.3. Freelance opportunities for women entrepreneurs

After having completed her studies in secretarial skills and language, Mellonie Mukilima worked a few years in a call centre in Kenya. Working hours were long, the work was demanding and provided minimal pay. She learned about freelancing through online platforms and eventually joined oDesk. She posted her resume and, after some time, she acquired her first client. She has now developed a significant client base. As a freelancer, she has completed more than 40 online jobs ranging from transcription to cleaning e-mail boxes to Facebook support and management, primarily for clients in developed countries. Through these jobs, she has been able to apply her skills, develop new skills and expand her connections and knowledge. At the same time, she works fewer hours but earns substantially more than when she was working in a local call centre.

Source: UNCTAD (2014a).

There are several advantages associated with the use of online markets. First, it can provide access to a pool of potential buyers, saving the seller the costs and expertise required to build up traffic. Second, well-known online marketplaces (especially B2C) tend to offer consumer trust, marketing and infrastructure. Third, the cost and technical requirements for setting up a store online are low. Finally, assistance with payment processing, order fulfilment, hosting, customer service and marketing may help sellers overcome time and skill constraints.

Potential disadvantages include that the seller is confined to the functionalities, payment options, geographical limitations and design templates available. Second, it may be difficult to secure effective integration with an enterprise's inventory management software and system. Third, the enterprise's products will be showcased next to those of competitors. Finally, the enterprise has to conform to the existing policy of the online marketplace that may not be consistent with the enterprise's own policy.

2. Access barriers to international e-commerce platforms

International e-commerce platforms are used by a growing number of small enterprises to market and sell various products. They can facilitate access to international markets, carry out trading, and organize shipping and financial transactions within and beyond national borders. However, as illustrated below with the cases of Amazon.com and eBay.com, merchants in developing countries may face restrictions when wishing to make use of these services.

(a) The case of Amazon.com

Amazon.com is the world's largest e-commerce company by online revenue (chapter II). Since 2000, it is possible for third-party sellers to post products on this platform in more than 20 categories, from books to garden products.[14] By mid-2014, more than 2 million third-party sellers had participated in it.[15] Amazon provides a spectrum of solutions, including selling and advertising, building websites, accepting online payments, shipping and customer service offerings. However, the complete range of services is only available to customers in the United States. When moving outside that country and especially beyond developed countries, the scope of services gradually narrows.

First, the possibility of registering as a seller is available only in those 23 countries in which bank accounts are supported by Amazon.[16] India is the only developing country included in this category. Second, "seller orders can only be placed if the buyer is in a supported country".[17] Currently, 50 United Nations Member States are supported. In the rest of the world, consumers cannot use Amazon sites to buy items. Third, buyers outside the United States are not able to purchase certain items, including video games, electronics, cameras and photo items (see table IV.1).

(b) The case of eBay.com

eBay.com is the third-largest e-commerce site in the world in terms of gross merchandise value (chapter II) and one of the world's leading online auction sites, on which individuals and enterprises can buy and sell various new and used items. eBay can in principle be used by small enterprises to access international markets. The full service spectrum offered includes bidding, buying, selling and support services of shipping, language translation services and data analytic tools.

Table IV.1. Access to different Amazon services, 2014

Service offered/ limitations	No. of countries	Notes
Seller registration is supported	23	Australia, Canada, India, New Zealand, United Kingdom, United States. Eurozone countries: Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain.
Supported countries from which to buy	50	[illegible]
Items buyers outside of the United States are not allowed to buy via Amazon		Video games, toy and baby items, electronics, cameras and photo items, tools and hardware, kitchenware and houseware, sporting goods and outdoor equipment, software and computers.
Currencies supported (ISO currency code)	8	USD, GBP, EUR, AUD, NZD, INR, HKD, CAD

Source: UNCTAD analysis of information on www.amazon.com; see annex 2.

As in the case of Amazon.com, the full range of services is only available in the United States. There are three types of eBay websites: (a) the United States site; (b) other international sites; (c) buy-only sites (table IV.2). In 172 of the 193 United Nations Member States, eBay sites are maintained as a buy-only version, which means that users can register to carry out bidding and buying but not to sell. Among the countries with international sites are the following developing countries: China, India, Malaysia, the Philippines, Singapore, Thailand and Viet Nam (annex 2).

Table IV.2. Accessibility to different eBay services among United Nations Member States, 2014

	Number of sites	Buying	Selling	Global shipping	Language translation	Data analytic tools
United States site	1	Yes	Yes	Yes	Yes	Yes
International sites*	23	Yes	Yes	No	Yes	Yes
Buy-only sites	172	Yes	No	No	No	No

Source: UNCTAD analysis of information from ebay.com and ebay.co.uk; see annex 2.
* There are also international sites in Hong Kong (China) and Taiwan Province of China.

For example, the company offers the Global Shipping Program that, once sellers have delivered their products to eBay Shipping Centre (in Kentucky), handles customs, import charges and allows complete end-to-end tracking of the items. A seller can aim for more than 40 countries.[18] This service is not available at eBay's site in the United Kingdom. However, a seller in the United Kingdom can list (sell) products directly in 14 global eBay sites in Europe, North America and Australia. As the seller centre of eBay's United Kingdom site explains, buyers that come from "countries without an eBay site see a buy-only version of eBay.com optimized for their location. When these international buyers visit eBay.com, they can only see listings that offer postage to their country".[19]

3. Setting up a stand-alone e-commerce site

Stand-alone e-commerce sites can be established in different ways. One is to add an e-commerce function to an enterprise's existing website. Another approach is to use a "software as a service" (SaaS) e-commerce solution with a package of what is needed to open and operate e-commerce. Finally, an enterprise may choose to build a customized e-commerce site. These options differ in terms of resource requirements, flexibility and the need for in-house skills and capabilities. According to traffic data from Alexa.com, Magento,[20] WooCommerce[21] and PrestaShop[22] are the top three platforms for setting up stores online.[23]

If an enterprise has a website – which is often not the case among small enterprises in developing countries – it can add an e-commerce function to it. For websites that are built with a content management system (such as Wordpress or Drupal Commerce), this can be done through an open-source, free "plugin" such as WooCommerce, or with a payment button linking to some payment processing service. This low-cost solution requires minimum time to get up and running. However, it not well implemented, the site may look unprofessional. Because the back-end processing of orders is done manually by the enterprise, it may also be time consuming to operate.

Various SaaS platforms offer the full range of e-commerce functions needed to develop and operate an online store. For example, Volusion.com provides an online store and shopping cart, built-in marketing tools, social and mobile commerce, hosting and security, customer support, payment processing, customer relationship management and order processing.[24] Advantages include the relative ease of use, rapid set-up, time-saving operations (because many back-end features are automated), and multifeatured professional-looking stores that are, in part, helped by the provision of templates. These can help to enhance the credibility of the enterprise that may not have the capacity or skills to produce a slick, nice-looking store of its own.

The flip side is that setting it up is more costly and demanding. Sellers are also confined to using templates and features available on the platform. The payment method and order fulfilment options supported by a certain platform may not always be applicable to the country of the seller. In a number of developing markets, including India, various end-to-end local e-commerce platforms have been developed specifically for the local market, such as Buildabazaar.com,[25] Martjack.com and Shopify.in (box IV.4).[26] These integrate better with local payment gateways and local logistics options, which may not be the case with international platforms.[27]

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Box IV.4. Shopify.in – a localized SaaS example

Canada-based Shopify is an SaaS e-commerce platform for selling physical goods such as fashion items, electronics, sporting goods and furniture. For online retailers, it offers, for example, site templates that can be customized with integrated shopping carts, e-mail, marketing and inventory management. Localized versions are available in a limited number of developing countries, including India, Indonesia, Malaysia and Singapore. It allows both individuals and merchants to run their own stores without the need for technical know-how to develop or maintain a website. The Indian version of the platform has plans starting at 818 ($14) per month, for which merchants obtain the capacity to sell a maximum of 25 products. They receive 1 gigabyte of file storage and are charged a 2 per cent transaction fee rising to 9,939 ($165) per month (the higher price being an option that has no transaction fees and provides additional features). In the last week of August 2013, some 1,000 new stores were created using Shopify in a [illegible]

Source: Techinasia.com, "How Shopify plans to be an advocate for Asia's small online retailers", available at http://www.techinasia.com/shopify-wants-to-be-an-activist-for-small-e-commerce-stores-in-asia/ (accessed 27 January 2015).

[a] See http://www.techvibes.com/blog/shopify-success-in-india-2013-08-29 (accessed 27 January 2015).

A more sophisticated option is to create a customized e-commerce site by using off-the-shelf software packages, such as Magento, or developing an entirely new site, which would allow for complete customization. Many off-the-shelf packages allow for some customization of functionalities and features available in the package. While the main advantage is the scope for tailoring the online store to the specific needs of the enterprise, it is a costly option that requires considerable in-house IT capabilities.

4. Processing of payments

As highlighted in chapter III, having access to competitive payment solutions is a critical facilitator of e-commerce. While credit cards account for the main share of retail e-commerce settlements in developed countries, this is not the case everywhere (table III.1). While payments can be received in different ways via credit cards, most of them require sellers to have a bank account, which can be a challenge for micro-businesses or self-employed merchants in developing countries. In this section, three options for enabling online payments are discussed: using the payment function embedded in a third-party e-commerce platform; a third-party payment gateway; and a payment gateway linked to a merchant account.[28]

(a) Direct payment processing by the online marketplace

As discussed in the previous section, there are potential advantages for micro or small enterprises to use existing online marketplaces when marketing and selling their products. Payment processing in such a case can be handled by in-house payment solutions provided by the online marketplace, such as Direct Checkout by Etsy.com, or Alipay by Alibaba.com. While limited to sellers that are registered on that marketplace, this option is easy to apply. Accepting payment is part of the seller's online marketplace account, and requires no additional account or set-up.

(b) Payment processing using a third-party payment gateway

There are several third-party payment processors on the market, such as Skrill,[29] PayPal,[30] 2Checkout,[31] Google Wallet, Checkout by Amazon, Yo!Payments (which enables businesses to receive payments via mobile money) and more are emerging. By using such services, a seller can receive online payments without opening a merchant account with a bank.[32] With a third-party payment processor, the seller only needs to set up an account with the processing company. While the set-up required is relatively straightforward, a fee per transaction has to be paid.

The extent to which a seller can make use of different payment gateways varies depending on its location. In order to receive payments through "Pay with Google", it is necessary to set up a Google Wallet Merchant Account, for which Google supports 52 United Nations Member States.[33] In the case of Checkout by Amazon, sellers need a local bank account in one of the 23 countries supported by the company.[34]

PayPal is the most widely used third-party payment gateway. With 152 million active registered accounts in over 200 international markets, it processed some 9 million payments per day in 2014.[35] Its online gateway allows for payment via credit and debit cards as well

as PayPal accounts. It provides multiple solutions that can be integrated into a website as a shopping cart, and customizable payment buttons (for example, the "Pay Now" button). PayPal services are available for 204 geographical locations,[36] including 173 United Nations Member States (table IV.3).[37] A distinction can be made between three types of services:[38] (a) sending and receiving money; (b) payment with a PayPal account, bank account, or credit or debit card account; (c) shopping online. These services are packaged into three account types (table IV.3).

The business account, which is the most relevant for online merchants that are registered businesses, is available in 73 United Nations Member States. The premier account, which is available in 90 United Nations Member States, makes it possible to receive money from online transactions (credit and debit card) by selling online, but is designed for individuals who are not in full-time business operations. Finally, the personal account, which can be used by informal enterprises, enables the sending of money and buying online, and is available to 173 United Nations Member States. For example, a small business in Sri Lanka can open a PayPal account and send money outside Sri Lanka but not use it to receive money from abroad.

Currency limitations represent another potential barrier. PayPal is limited to 28 types of currencies, Google Wallet to 42 and Checkout by Amazon to eight currency types.[39] Such limitations add transaction costs and demand more expert knowledge to navigate through national exchange policies.[40] Furthermore, international payments, especially to developed countries, have to meet various compliance/anti-money-laundering regulations. This involves, among other things, completing, signing and providing various compliance documents. For micro and small enterprises, this can represent a significant challenge, but one which may, at least partially, be alleviated through public interventions (box IV.5).

Table IV.3. Geographical coverage of different PayPal services, 2014

Type of account	Number of countries in which account is available	Remarks
Personal accounts[a]	173	Send and receive money at individual capacity
Premier accounts	90	Personal account functions as well as accepting credit/debit cards, yet individual capacity
Business accounts	73	Full functions including bank account access, employee access etc. at the registered business operations

Source: UNCTAD analysis of information from PayPal; see annex 2.

[a] As of 30 September 2014, the "receive" function was not available in the PayPal sites of eight of these countries: the Plurinational State of Bolivia, Costa Rica, Guatemala, Guyana, Nicaragua, Paraguay, Saint Vincent and the Grenadines, and Suriname.

(c) Use of a payment gateway linked to a merchant account

This option is more complex as it involves obtaining a merchant account with a bank, paying associated fees and selecting a payment gateway.[41] Sellers in developing countries may consider an international payment gateway (for example, AsiaPay.com, which is available in 12 Asian countries including Viet Nam) or a local one (for example, Nganluong.vn in Viet Nam). The former option may offer more advanced technical capabilities such as fraud monitoring, but may lack local availability or may not be supported locally in terms of its fees, currencies accepted, features or language options. The advantage compared with a third-party processor is that the transaction is handled directly between the seller and the buyer, which normally results in the seller receiving the money faster and at lower cost. On the flip side, set-up costs are higher and the process more complex.

5. Order fulfilment

As emphasized above, order fulfilment is an essential element of e-commerce. If the seller is unable to deliver the item, the buyer has no reason to trust the seller or, more generally, the marketplace. Order fulfilment involves inventory storage and management, packing the order, shipping, providing customer services and taking care of returns and exchanges. Attending to the full range of related activities can quickly become a time-consuming task for a small business, making third-party e-commerce platforms that offer order fulfilment services more attractive.

Poor logistical infrastructure has led some e-commerce companies to establish in-house delivery systems. In Nigeria, for example, the Jumia e-commerce portal runs its own system to deliver

Box IV.5. Support with compliance: The PACIR project in Côte d'Ivoire

Small enterprises in low-income countries need to overcome significant barriers before they can fully benefit from e-commerce. They need knowledge of and technical capabilities for available solutions, access to online payment solutions, cost-effective logistics, an understanding of import requirements and fiscal representation in export markets, awareness and reputation of the sellers and their goods, and improved customer service.

The ITC supports small enterprises in different ways in this context. For example, a prototype platform was built within the PACIR project, enabling fashion and accessory producers from Côte d'Ivoire to market their products online. Since 2013, ITC has coached selected local companies on their marketing and branding strategies, and helped them to overcome key barriers to selling products online. With the launch of the "Ivory Mall," local producers in this sector have found a new channel for exporting their goods to Europe.

One of the challenges concerns the issue of compliance. This was addressed by first having entrepreneurs united behind one single distributor. ITC then helped the distributor to comply with the terms and conditions of CheckOut.com for merchants and to prepare the needed documents. ITC also helped prepare the e-commerce website and make it compliant with the terms of conditions. Finally, approval was obtained for the site ivorymall.com to market more than 1,000 products from 26 brands made in Africa and accept online payment with Visa, MasterCard and PayPal.

Source: UNCTAD, based on information provided by ITC.

[a] For more information, see http://www.intracen.org/Cote-divoire---Appui-institutionnel-et-operational-pour-la-melioration-du-cadre-des-affaires/ (accessed 28 January 2015).

products to end customers (box II.3). As there was no precedent for e-commerce payments in the market, Jumia had to let buyers pay cash on delivery (there were no widely accessible e-payment options) and offer various delivery locations (such as the nearest police station). Although services such as DHL existed in the market, they were not prepared to handle cash. Today, Jumia controls 70 per cent of Nigeria's online retail market.[42]

Sometimes e-commerce companies in low-income countries face particular challenges due to either inadequate or non-existent building numbers, street names and layouts. Around 60 countries do not have a postcode system, one of the pillars of efficient delivery. Addresses serve as a basic facilitator of communication between people, public service institutions and businesses (UPU, 2012). Without them, it is difficult to reach individuals and for businesses to operate effectively.

In some cases, such limitations may be overcome by using automated parcel lockers, drop boxes, post office boxes, and other alternative methods of delivery. But such approaches are not always convenient. Naked Pizza in Nairobi saw a need to individually map and label every apartment, office complex and home in its delivery radius in order to locate buyers and to be able to guarantee delivery within a certain time.[43] Other companies have found the lack of a precise address system to be a business opportunity. OkHi (www.okhi.com) in Kenya, for example, seeks to assign a physical address to the people in the world who don't have one. It is enabling the creation and secure sharing of physical addresses via mobile phone. The company aims to enable buyers to turn their physical addresses into a unique uniform resource locator (URL), which can subsequently be shared via e-mail SMS and WhatsApp. Ultimately, however, it is important to establish a nation-wide, universal addressing system to avoid fragmentation (see also chapter VI).

6. The importance of local solutions

Preceding sections have highlighted multiple options for micro and small enterprises in developing countries to engage in e-commerce. Whereas new solutions are expanding their opportunities to sell online, significant challenges and barriers remain. Compared with their counterparts in more developed parts of the world, small businesses in large parts of Africa and Asia face additional challenges.

Accessibility barriers cause significant frustrations among aspiring young entrepreneurs. The online platform for advocacy campaigners, change.org, is full of petitions from Ghana, Nigeria, Sri Lanka and Ukraine, seeking the attention of PayPal, eBay and Amazon. For instance, one petition that was signed

by 12,500 people requests PayPal to allow people in Ukraine to receive money.[44] The "PayPal for Sri Lanka" campaign, which started its activities in 2012, has attracted some 6,000 supporters appealing to the Government of Sri Lanka and PayPal to work together to find a solution.[45]

Moreover, even when they are accessible, global e-commerce platforms do not always provide solutions to overcome domestic barriers experienced in the developing countries. For instance, eBay or Amazon do not provide support for border administration when importers face problems of customs clearance or domestic transport. Access to PayPal does not guarantee that payments can be seamlessly transferred through each local bank where banking infrastructure is not efficient. For example, in Kenya, Equity Bank reached an exclusive arrangement with PayPal for cash withdrawals.[46]

The absence of global platform providers creates scope for local players to fill the void. In sub-Saharan Africa, for example, a number of e-commerce payment gateways have been created. These include Interswitch, JamboPay, Ozinbo, Paga, Paynow, PesaPal, Simple Pay, 3G Direct Pay and Yo!Payments, which all facilitate payment via mobile phones.

In Bangladesh, several e-commerce sites are targeting the domestic market. ClickBD[47] is one of the largest of these. Following broadly the eBay format, it operates with a huge community of buyers and sellers, trading a wide range of items. Built by a local IT engineer-cum-entrepreneur, it offers both bidding and fixed-price options for buyers. Online payments are possible with a prepaid card. Another popular site is Akhoni.com,[48] which accepts Visa and MasterCard payments in addition to popular mobile payments such as bKash.[49] The company can also organize local delivery. In Sri Lanka, a homegrown e-commerce company has emerged as an alternative e-commerce platform for small enterprises to buy items from the international market (box IV.6). The examples cited above from Africa and Asia illustrate the importance of local solutions complementing those offered by global e-commerce companies.

B. OPPORTUNITIES FOR RURAL ENTERPRISES TO SELL ONLINE

The lingering rural–urban divide in terms of access to affordable ICT services represents a barrier for rural enterprises wishing to leverage ICTs in their activities. Whereas as much as 90 per cent of rural populations are now covered by a mobile signal, there has been less progress in terms of Internet access, and less still with regard to broadband (Partnership on Measuring ICT for Development, 2014).

In considering the potential of rural e-commerce, it is important to understand the variety of products typically produced by micro and small enterprises. Not every product is necessarily a good candidate for online sales. Rural products can be categorized into five types:

- Fresh food, such as vegetables, meat and fish: These products are difficult to sell due to perishability. Unless there is an efficient delivery network and necessary packaging (for example, ice packs) it may not be possible to get the product to the buyer in time before it spoils. Furthermore, food is generic and requires some kind of distinction to

Box IV.6. Helping small business overcome barriers to e-commerce: The case of Kapruka

With over 10,000 products in 30 categories and an annual turnover of over $10 million, Kapruka is the largest e-commerce company in Sri Lanka. An important part of its business strategy is to help local entrepreneurs overcome barriers to e-commerce.

Many entrepreneurs in Sri Lanka do not have credit cards and local banks may not entertain international transactions. Thanks to agreements with the Central Bank and the international online card authentication organization VeriSign, Kapruka can accept local currency transactions. It helps buyers choose items in international markets and optimize the prices and offerings of various international sites before placing an order.

Small businesses often find it challenging to navigate customs procedures, unpredictable delayed clearance, landing charges and taxes. In response, Kapruka has developed an import simulator that allows local buyers to cut and paste items from global websites that generate accurate estimates about shipping cost, taxes and also potential landing dates. This solution operates in concert with warehouses in the United States and Sri Lanka and handles overall shipping including clearance at landing. A local van service carries out deliveries across Sri Lanka. Kapruka has entered into agreements with various global brands to ensure smooth operations.

Source: UNCTAD.

make it more interesting. Therefore, niche goods, such as rare or unusual foods or those that have certification (for example, for being organic or from a certain region) could be compelling enticements for online sales;

- Dried herbs and animal products: These are less perishable and therefore more viable;
- Manufactured products (for example, furniture): These pose less of a challenge though they require a supporting ecosystem for packaging and hardware accessories;
- Handicrafts: These may be more appealing to foreign than domestic buyers. Their quality dictates how attractive they might be to potential online buyers;
- Services, such as homestays, restaurants and tourist attractions: These are not perishable and they may be attractive to local citizens, for example, to urban people interested in rural tourism. Other service categories of relevance include various micro tasks, app development and game development as long as the required infrastructure and skills are in place (UNCTAD, 2012a).

The remainder of this chapter looks at the mixed experience of rural e-commerce in three Asian countries – China, the Republic of Korea and Thailand – and discusses lessons that can be drawn. The countries vary in terms of approaches taken to promote rural e-commerce as well as with regard to the readiness for engaging in such activities.

1. Grassroots-led rural e-commerce in China

China has a rural population of over 650 million inhabitants, of which about 165 million have Internet access (Minges et al., 2014). The central Government has taken various steps to reduce the urban–rural digital divide. For example, the Village to Village project, coordinated by the Ministry of Industry and Information Technology, helped to provide telephone service and subsequently broadband to administrative villages.[50] By 2012, 88 per cent of them had obtained such access. Another initiative is the dedicated telephone number, "12316", launched by the Ministry for Agriculture to provide nationwide information about agricultural techniques, disaster warnings and market pricing, covering about one third of farmers across the country. However, the central Government does not have a specific programme for rural e-commerce.

A number of provinces have developed portals with agricultural information including pricing and the ability to advertise products with offline purchase. Some have also implemented B2B initiatives, such as farmers pooling purchases to achieve scale for buying inputs such as fertilizer. Rural e-commerce initiatives have often emanated from the ground up, as illustrated by two cases in the rural Jiangsu and Zhejiang Provinces.

(a) The case of Dongfeng village in Jiangsu Province

In the village of Dongfeng, under the administration of Shaji Town in Jiangsu Province, inhabitants have traditionally made a living by farming and migrant labour. Villagers have cooperated to specialize in livestock raising and recycling of waste plastic, but with little success. In 2006, a young man from the village, inspired by the home furnishings of the Swedish company IKEA, set up Dongfeng's first online shop to sell simple assembled furniture. Today, furniture assembled in this village is sold online all over the country and also exported.

Before the introduction of online retailing, there was no furniture industry in Shaji Town, let alone other advantages such as capital, logistics or accessible geography. However, when some villagers started selling assembled furniture through the Internet, several farmers decided to follow their example. As a result, a furniture assembly and manufacturing industry started to emerge. At the same time, other related industries derived benefits from the development of online retailing, including wood processing, logistics, hardware accessories and packaging. By the end of 2010, the village had three hardware accessories factories, 15 logistics and express delivery companies, and seven computer stores. There are now over 400 online shops with combined annual revenue of over $50 million (Kan, 2010), and Dongfeng has been named the top "Taobao village".[51]

To conclude, the online shopping phenomenon originated from the grassroots, without preferential government policies or financial support. Its growth has had various effects. Not only has the income of villagers increased, unemployment has been almost eliminated. On average, six workers are estimated to be employed by every online retailer (World Bank, 2014).

(b) The case of Suichang in Zhejiang Province

A different example is Suichang, a county of some 50,000 inhabitants in the south-west of Zhejiang

Province. Its mountainous and forested surroundings are home to abundant agricultural resources, such as bamboo, herbs, tea, flowers, vegetables, poultry and mushrooms. In 2005, villagers started selling agricultural products through popular Chinese e-commerce portals. By 2012, almost every household had set up a store with annual sales exceeding ¥120 million ($19 million). Villagers leveraged growing demand for bamboo products such as charcoal, shoots and furniture, as well as organically grown vegetables and herbs. Surging sales helped to drive the revitalization of upstream crop farming. For example, the size of bamboo forests more than doubled, from 150,000 mu (10,000 hectares) in 2005 to 350,000 mu (23,300 hectares) in 2011. Operating an online store has become a new employment channel for college graduates, and laid-off or migrant workers. Employment related to e-commerce in this county is estimated to exceed 3,000 and the number of online stores in Suichang has grown to about 1,500, not only marketing agricultural products but also tourism to attract visitors.[52]

In May 2012, a strategic cooperation agreement was concluded between Suichang County and Taobao.com, the C2C online marketplace of the Alibaba Group (box II.2), to establish a dedicated portal (http://suichang.china.taobao.com). Many of Suichang's e-commerce merchants have set up online stores on this marketplace.[53]

The Online Shop Association, which was set up in March 2010 by some pioneer operators in Suichang, has played an important role in three ways: training, transfer of knowledge and logistics. Regular courses on how to operate an online store are available to members free of charge. Members can benefit from services by professional photographers and by using image processing techniques. The Association also encourages experienced members to share their skills in online store design and with regard to fraud prevention. In the area of shipping and delivery, the Association negotiates prices with express delivery companies on behalf of members. Its distribution centre aggregates products to achieve economies of scale for shipping, which helps to reduce the costs of logistics.

The local government has contributed in different ways. It has upgraded transport conditions through the construction of roads to remote areas and a major highway linking the province to China's superhighway network. The infrastructure of ICTs is being improved and most households enjoy broadband connectivity. It provided funds for the construction of a 3,000 square metre distribution centre, funding and training for e-commerce start-ups as well as preferential finance, tax and house leasing measures. It furthermore offers online sales guarantees and certifies local online store operators. It has established a food safety mechanism in partnership with farmers, cooperatives, the Online Shop Association and Taobao to monitor the process from product preparation, to online sales and after-sales activities.

2. Rural e-commerce in the Republic of Korea: The case of the Information Network Village platform

The Republic of Korea is one of the world's most advanced ICT nations. It is among the top 10 countries in terms of the number of online buyers (table II.2) and among the top 10 performers in the UNCTAD B2C E-commerce Index (chapter III). The Government has long recognized the potential for e-commerce to support enterprise growth in both urban and rural areas. Online shopping in 2013 amounted to 38,494 billion ($35 billion) (Statistics Korea, 2014). Some 71 per cent of those living in rural areas used the Internet in 2013. The online market for food and other rural products is significant and growing (Korea Internet and Security Agency, 2013).

The Closing the Digital Divide Act (2001) called for "establishing public access centres that offer Internet access and learning opportunity to residents in need".[54] This was accomplished through the Information Network Village (INVIL) platform, launched in 2001 by the Ministry of Government Administration and Home Affairs. The INVIL platform was "designed to reduce the digital divide between rural and urban regions... and to increase income level of local residents by boosting regional economy through e-commerce, which eventually leads to the improvement of the quality of life in rural communities".[55] Villages can submit an application to the municipal authority that decides whether to approve it based on certain selection criteria. At the end of 2014, there were 357 INVILs in the country (figure IV.1).

All INVILs appear on the central portal (http://www.invil.org) with descriptions of their agricultural specialties and tourist attractions. Niche products and

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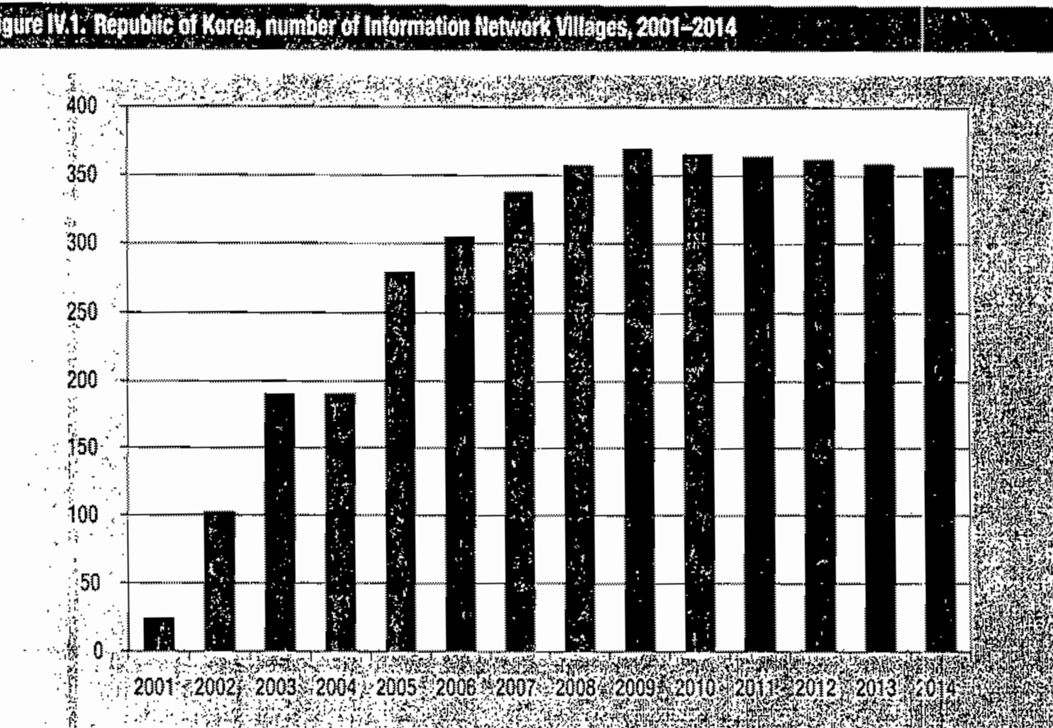
Figure IV.1. Republic of Korea, number of Information Network Villages, 2001–2014



Source: Republic of Korea, Ministry of Government Administration and Home Affairs.

services include visiting local lakes, bean sauce and medical mud.

In 2013, the INVIL platform facilitated about $39 million in online sales, and some 17 million visitors were recorded on the main INVIL website and on those of each information village (figure IV.2). A percentage of the income from the sales (around 1.5 per cent) is allocated to INVIL operations and maintenance.[56] Quality control is stringent, with all products and services being reviewed before they can be sold on the platform. Villagers are also assisted by INVIL staff to create compelling stories about their products to enhance their sales potential. Logistics are efficient: it takes less than three days to send a product anywhere in the country at low prices ($2 to $3 per kilo). An memorandum of understanding has been made with eBay to market specific INVIL products through a dedicated channel on its e-commerce platform in the Republic of Korea.

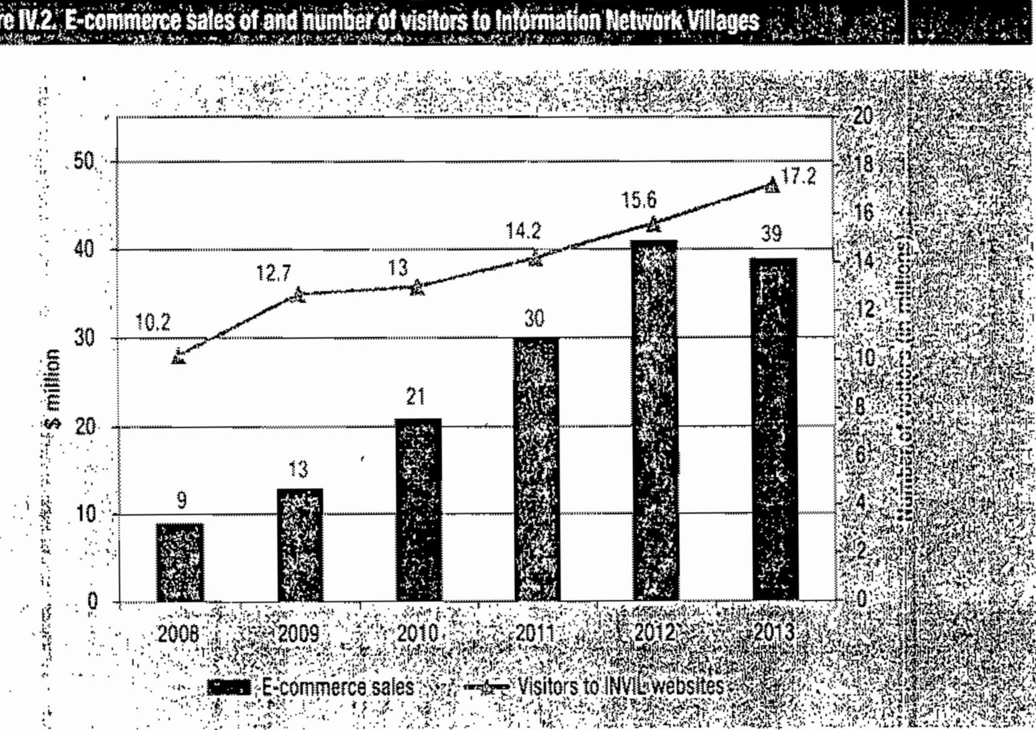
The postal operator in the Republic of Korea has also supported the growth of rural e-commerce. Its post office service has developed into a distribution channel which directly connects producers nationwide with consumers. It has built up an image of a "safe distribution channel" where consumers can trust and buy good quality typical products from every region of the nation. Among other things, nine small and medium-sized rural enterprises have achieved more than 1 billion ($0.8 million) in annual sales through the postal distribution channel. This was made possible by the combination of public trust that it enjoyed as a government agency, strict quality control, reasonable prices and quick and accurate delivery (ITU and UPU, 2010).

3. Rural e-commerce in Thailand

In Thailand, B2C e-commerce revenues amounted to B 121,392 million ($3.9 billion) in 2012 (Thailand, National Statistical Office, 2013a). Just under 1 million people had shopped online in that year (Thailand, National Statistical Office, 2013b). One quarter of the population aged 15 and above used the Internet and in non-municipal areas the equivalent rate was 19 per cent. Thailand features in the middle of the UNCTAD B2C E-commerce Index, in seventieth place, but overperforms in terms of the actual share of online shoppers in the population (chapter III).

In some respects, Thailand has good conditions for e-commerce. The entire population is covered by the postal system, and home delivery is available to 95 per cent of households.[57] Moreover, some merchants deliver to the country's 7,000 round-the-clock 7-Eleven stores.[58] Financial legislation that supports online payment via credit card, bank transfer

Figure IV.2. E-commerce sales of and number of visitors to Information Network Villages



Source: Korea Local Information Research and Development Institute.
Note: The number of visitors includes visitors to the main INVILs website (www.invil.org; accessed 28 January 2015) and to those of each of the information villages.

and digital money is also in place. Not only is there a local e-money service similar to PayPal, but buyers can also make payment at over 35,000 locations such as banks, automatic teller machines and convenience stores.[59]

As much as three quarters of the population live in rural areas. Various efforts by the Government have been made to bridge the urban–rural digital divide, including by expanding the network of telecentres. The Ministry of Information and Communication Technology (MICT) has offered computers and one-year free Internet access to local communities that wish to establish a telecentre and that meet certain criteria. By 2012, the MICT had established 1,881 telecentres and additional ones were to be installed using universal service contributions. In 2013, just over 700,000 Thais (about 4 per cent of all Internet users) accessed the Internet via telecentres (Thailand, National Statistical Office, 2013b).

The MICT has also established websites to market products and services of the telecentres. One such site sells telecentre products (http://www.thaitelecentrecharms.com; accessed 28 January 2015) and another arranges tours to telecentres (http://thaitelecentretour.com; accessed 28 January 2015). Results have been disappointing. The websites have relatively low visibility, and maintenance and upgrading are done in-house with limited resources. Another challenge is convincing merchants about the importance of quality control and that the products they sell should be relevant for potential buyers. Online ordering and payment are possible, but orders are routed to a central location. Sellers are contacted to dispatch the product with payment eventually wired to the merchant's bank account. As a result, the platform is used more as a marketing tool with buyers contacting sellers offline. This has sometimes caused problems with merchants being slow to dispatch products or imposters posing as buyers tricking the sellers to provide details about their bank accounts.[60]

Apart from the telecentre initiatives, the Government has developed another website for the sale of rural products (http://thailandmall.net; accessed 28 January 2015). However, this site also suffers from poor visibility. For every 550 users that visit one of the country's popular commercial online shopping sites, only one visits thailandmall.net.[61] Rural entrepreneurs have instead turned to social media to advertise their products with sales typically taking place offline.[62]

4. Lessons from the three cases

The three country cases represent different approaches to supporting e-sales by rural enterprises, with diverging results. In the Republic of Korea and Thailand, the Governments have established e-commerce platforms for rural citizens to sell their products. In China, rural e-commerce has been more grassroots driven, but supported indirectly by local governments.

The experience in the Republic of Korea has been positive, with rural e-commerce sales continually rising. Success factors include close collaboration between the Government, telecentre operators and rural citizens to market and sell goods and services. Supportive actions have involved training, helping sellers to create compelling advertisements, having the private sector develop a sophisticated e-commerce portal and links to other online platforms in the country. This has been boosted by a relatively high level of online shopping by consumers and solid payment and delivery infrastructures.

The Thai experience has been less successful. Though the Government has established a number of telecentres in rural areas, these have not been effectively leveraged for e-commerce. Platforms developed to sell goods and services have lacked the sophistication of private-sector online shopping malls. They have hitherto not been widely used, with payment and logistics being less than ideal, and there has not been a strong effort to encourage rural citizens to participate.

In China, several villages have successfully exploited the Internet to sell local products using the country's leading e-commerce sites. In the two cases examined, the initiative to engage in e-commerce came from the grassroots level. A positive side effect was the rise of a supporting ecosystem of logistics, upstream crop revitalization, and processing and packaging industries. Though the Government was not directly involved in this development, it contributed by improving roads, broadband infrastructure and certification. With the biggest e-commerce market in the world, there is large demand online for rural products. Indeed, in 2012, Alipay established a rural business unit to reach non-e-commerce users in third- and fourth-tier cities and in rural areas.[63]

The three country cases indicate several ways in which Governments can contribute to the development of rural e-commerce. First, a key role is to create an enabling environment, with roads, broadband access, logistics and appropriate legislation for carrying out e-commerce and facilitating online payments. Rural e-commerce will not be successful unless villagers have access to the Internet and can deliver their products as well as safely receive payments. Additional policy measures used in China include tax breaks, preferential loans and construction of distribution warehouses.

Second, rather than developing government-owned websites, a more effective approach may be to work in partnership with popular existing e-commerce platforms and create a link to rural products. This saves Governments from having to devote resources to developing an e-commerce site from scratch. Moreover, existing portals are typically more visible with a large client base. In Thailand, government-developed platforms have suffered from low visibility and limited maintenance. In China, by contrast, villagers linked up with existing sites with successful results. In the Republic of Korea as well, an agreement was made to market rural products to the wider reach of a privately owned online shopping site.

Third, Governments can endorse rural e-commerce portals to enhance trust among potential buyers and create economies of scale by uniting rural products under a well-marketed government campaign. In the Republic of Korea, the Government created a little green man logo associated with its INVIL e-commerce programme. In addition, Governments can raise the visibility of e-commerce through advertising (billboards, radio and television advertisements, Internet ads, and the like) to encourage consumers to buy online. Certifications for food quality, organic processes and fair trade can also help to make products more attractive. Here merchants may benefit from government assistance.

Finally, Governments may engage in the training of villagers in how to leverage e-commerce tools. This may include alerting them about popular e-commerce sites, teaching them how to create compelling advertisements and stressing the importance of good quality and rapid delivery. Some farmers may be too busy or lack the inclination for Internet tasks. In this case it may be necessary to involve intermediaries to provide assistance.

NOTES

1 See http://www.alexa.com/topsites/countries/KE (accessed 10 August 2014).

2 Flipkart is one of India's largest online marketplaces. It had 22 million registered users in 2014; see http://www.flipkart.com/s/press (accessed 19 June 2014).

3 Snapdeal.com is also among the top online marketplaces in India with more than 50,000 merchants in 2014; see http://www.snapdeal.com/info/faq/About%20Snapdeal (accessed 2 June 2014).

4 See http://help.aliexpress.com/topquestions/can_i_sell_on_aliexpress.html (accessed 27 January 2015).

5 See http://www.alexa.com/siteinfo/aliexpress.com (accessed 6 June 2014).

6 One of the leading global marketplaces for handmade products with 30 million members; see https://blog.etsy.com/news/2013/notes-from-chad-10/ (accessed 4 June 2014).

7 See http://www.entrepreneur.com/article/230441 (accessed 6 June 2014).

8 Russian e-commerce site dealing in online sale and delivery of fashion apparel, shoes, accessories, cosmetics, fragrances and home furnishings, with 20 million users; see http://company.lamoda.ru/about/history/ (accessed 19 July 2014). Traffic data are from Alexa.com as of 9 June 2014.

9 Examples include Brazil (http://www.shopping.correios.com.br), the Republic of Korea (http://world.epost.go.kr/), Saudi Arabia (http://www.e-mall.com.sa/) and Tunisia (http://www.e-fleurs.poste.tn/) (all accessed 27 January 2015).

10 See https://www.elance.com/q/sites/default/files/docs/AIR/AnnualImpactReport.pdf.html (accessed 6 June 2014).

11 See https://www.linkedin.com/company/elance (accessed 4 June 2014).

12 In addition, these online marketplaces for services or digital goods offer online skill-training courses on technical topics, which could be a useful resource for developing-country micro, small and medium-sized enterprises.

13 See https://www.elance.com/r/contractors/q-rwanda/cry-rwanda (accessed 10 August 2014).

14 See http://www.amazon.com/Careers-Homepage/b?ie=UTF8&node=239364011 (accessed 15 September 2014).

15 See http://services.amazon.com/selling/benefits.htm?ld=AZFSSOAAS (accessed 11 September 2014).

16 See http://www.amazon.com/gp/help/customer/display.html?nodeId=201118550 (accessed 15 September 2014).

17 See http://www.amazon.com/gp/help/customer/display.html?ie=UTF8&nodeId=537734&#outside (accessed 15 September 2014).

18 See http://pages.ebay.com/sellerinformation/build-your-business-online/grow-your-sales/sell-online-internationally/index.html (accessed 11 August 2014).

19 See "Where to sell internationally", Seller Centre, eBay.co.uk, 11 August 2014; available at http://sellercentre.ebay.co.uk/where-to-sell-internationally?cat=1015 (accessed 27 January 2015).

20 Magento provides scalable e-commerce solutions; see http://magento.com/company/press-room/press-releases/magento-recognized-top-platform-fast-growing-retailers-internet (accessed 6 June 2014).

21 WooCommerce is a free and open-source e-commerce plugin with over 4 million downloads as of 2014; see http://www.woothemes.com/woocommerce/ (accessed 19 June 2014).

22 PrestaShop is a free, open-source e-commerce software developed in France and claiming almost 4 million downloads as of 2014; see http://www.prestashop.com/ (accessed 4 June 2014).

23 See http://tomrobertshaw.net/2014/04/april-2014-e-commerce-survey/ (accessed 27 January 2015).

24 Founded in 1999, Volusion.com (United States) provides hosted e-commerce solutions with over 40,000 stores and $15 billion in merchandise sales on its platform as of 2014; see http://www.volusion.com/history (accessed 10 August 2014).

25 India-based hosted e-commerce solution with over 20,000 live stores as of 2014; see http://www.buildabazaar.com/ (accessed 19 July 2014).

26 India-based e-commerce solution with over 2,000 customers globally; see http://www.martjack.com/aboutus.html (accessed 19 July 2014).

27 See http://www.iamwire.com/2013/08/ecommerce-saas-platforms-india-comparison/ (accessed 10 August 2014).

28 Various alternative payment solutions can be searched online; see http://www.searchenginejournal.com/top-12-alternatives-paypal/ (accessed 19 June 2014).

29 Electronic payment service with over 36 million account holders that serves over 156,000 businesses as of 2014; see https://www.skrill.com/en/about-us/ (accessed 6 June 2014).

30 Electronic payment service with over 153 million accounts worldwide as of 2014; see https://www.paypal.com/ke/webapps/mpp/about (accessed 2 June 2014).

31 Payment service with 50,000 merchants that supports transactions in 196 countries through 8 payment methods, 26 currencies and 15 languages; see https://www.2checkout.com/about (accessed 4 June 2014).

32 Many small businesses do not meet the criteria established by banks, for example, in terms of the length of time that the business has been operating or in terms of creditworthiness; see, for example, http://www.entrepreneur.com/article/53306 (accessed 2 June 2014).

33 See http://www.google.com/wallet/send-money/ (accessed 15 September 2014).

34 See countries and currencies supported by Amazon currency converter for sellers by Amazon; available at http://www.amazon.com/gp/help/customer/display.html?nodeId=200497820 (accessed 15 September 2014).

35 See https://www.paypal-media.com/about (accessed 27 January 2015).

36 PayPal's list of countries/economies also includes many that are not Member States of the United Nations, such as the Holy See, the British Virgin Islands, Hong Kong (China) and Taiwan Province of China.

37 In 20 United Nations Member States, PayPal is not available, including Bangladesh, Ghana and Pakistan, as well as six countries that are under United States trade embargo (Cuba, the Democratic People's Republic of Korea, the Islamic Republic of Iran, Myanmar, the Sudan and the Syrian Arab Republic).

38 PayPal account types; see https://www.paypal.com/us/webapps/helpcenter/helphub/article/?solutionId=FAQ2347 (accessed 27 January 2015).

39 A service that as of the end of 2014 was only available in selected developed countries, Stripe (stripe.com), supports payment in well over 100 currencies, depending on the credit card used.

40 Information from the respective company websites, accessed on 15 August 2014.

41 An e-commerce payment gateway authorizes credit card payments and processes them securely with a user's merchant account. Every payment made with a credit card involves the transfer of funds to a merchant account, which the seller holds directly with a bank. The merchant has full responsibility for the transactions that occur with its account, and each bank has its own terms of service to which account holders must adhere.

42 Interview with Tunde Kehinde, former Managing Director of Jumia Nigeria.

43 Interview with Ritesh Doshi, Chief Executive Officer, Naked Pizza Kenya.

44 "Allow receiving money to Ukraine through PayPal", change.org, 15 October 2014; see http://www.change.org/en-GB/search?utf8=%E2%9C%93&q=PayPal+Ukraine (accessed 28 January 2015).

45 "Enable receiving money to Sri Lanka through PayPal", change.org, 15 October 2014; see https://www.change.org/p/enable-receiving-money-to-sri-lanka-through-paypal?lang=en (accessed 6 February 2015).

46 See "Kenya's Equity Bank partners with PayPal", *Balancing Act*, 12 July 2013; available at http://www.balancingact-africa.com/news/en/issue-no-663/money-transfer/kenyas-equity-bank-p/en (accessed 28 January 2015).

47 ClickBD.com (Bangladesh), 14 October 2014; see http://www.clickbd.com/ (accessed 28 January 2015).

48 Akhoni.com (Bangladesh), 14 October 2014; see http://www.akhoni.com/ (accessed 28 January 2015).

49 bKash.com (Bangladesh), 14 October, 2014; see http://www.bkash.com/ (accessed 28 January 2015).

50 An administrative village has an organizing committee and is responsible for a group of natural villages.

51 "Taobao fosters e-commerce villages across China", *Want China Times*, 23 January 2013.

52 "Suichang strives for e-commerce", *GBTIMES*, 2 October 2012; see http://gbtimes.com/business/suichang-strives-e-commerce-success (accessed 28 January 2015).

53 Taobao.com has been used by many rural enterprises to start online businesses. In Junpu Village, Guangdong Province, for example, more than 1,400 online shops had already been set up in September 2013 by villagers with a turnover reaching ¥35 million ($5.8 million); see "Cash cow, Taobao", *The Economist*, 24 May 2014, available at http://www.economist.com/news/china/21602755-one-small-hamlet-teaching-people-how-sell-online-cash-cow-taobao (accessed 28 January 2015), and Guihang et al. (2014).

54 See http://eng.nia.or.kr/english/bbs/board_view.asp?BoardID=201112221611162611&id=9159&Order=301&search_target=&keyword=&Flag= (accessed on 28 January 2015).

55 See http://www.invil.org/english/action.do?url=/english/introduction/about_invil (accessed 6 February 2015).

56 See United Nations Department of Economic and Social Affairs, 2011 United Nations Public Service Awards Winners; available at http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan045540.pdf (accessed 28 January 2015).

57 Data from UPU; see http://pls.upu.int/pls/ap/ssp_report.main?p_language=AN&p_choice=BROWSE (accessed 5 February 2015).

58 See "Home delivery is so 2013: Zalora now offers convenience store pickups in Thailand", *TechinAsia*, 16 January 2014; available at http://www.techinasia.com/home-delivery-2013-zalora-offers-convenience-store-pickups-thailand/ (accessed 28 January 2015).

59 See http://www.123.co.th/whatis123.aspx (accessed 28 January 2015).

60 Interview in December 2013 with Mr. Kamolrat Intaratat of Sukhothai Thammathirat Open University and consultant to MICT Thai Telecentre project.

61 Derived from Alexa.com website rankings.

62 See "Thai artisans from the One Tambon One Product project use social media to boost sales!", Asia Pacific Telecentre Network; available at http://www.aptn.asia/success-stories/127-thai-artisans-from-the-one-tambon-one-product-otop-project-use-social-media-to-boost-sales (accessed 28 January 2015).

63 See "Alipay aims to bring e-commerce to rural Chinese", *CHINACSR*, 24 December 2012; available at http://www.chinacsr.com/en/2012/12/24/8743-alipay-aims-to-bring-e-commerce-to-rural-chinese/ (accessed 28 January 2015).

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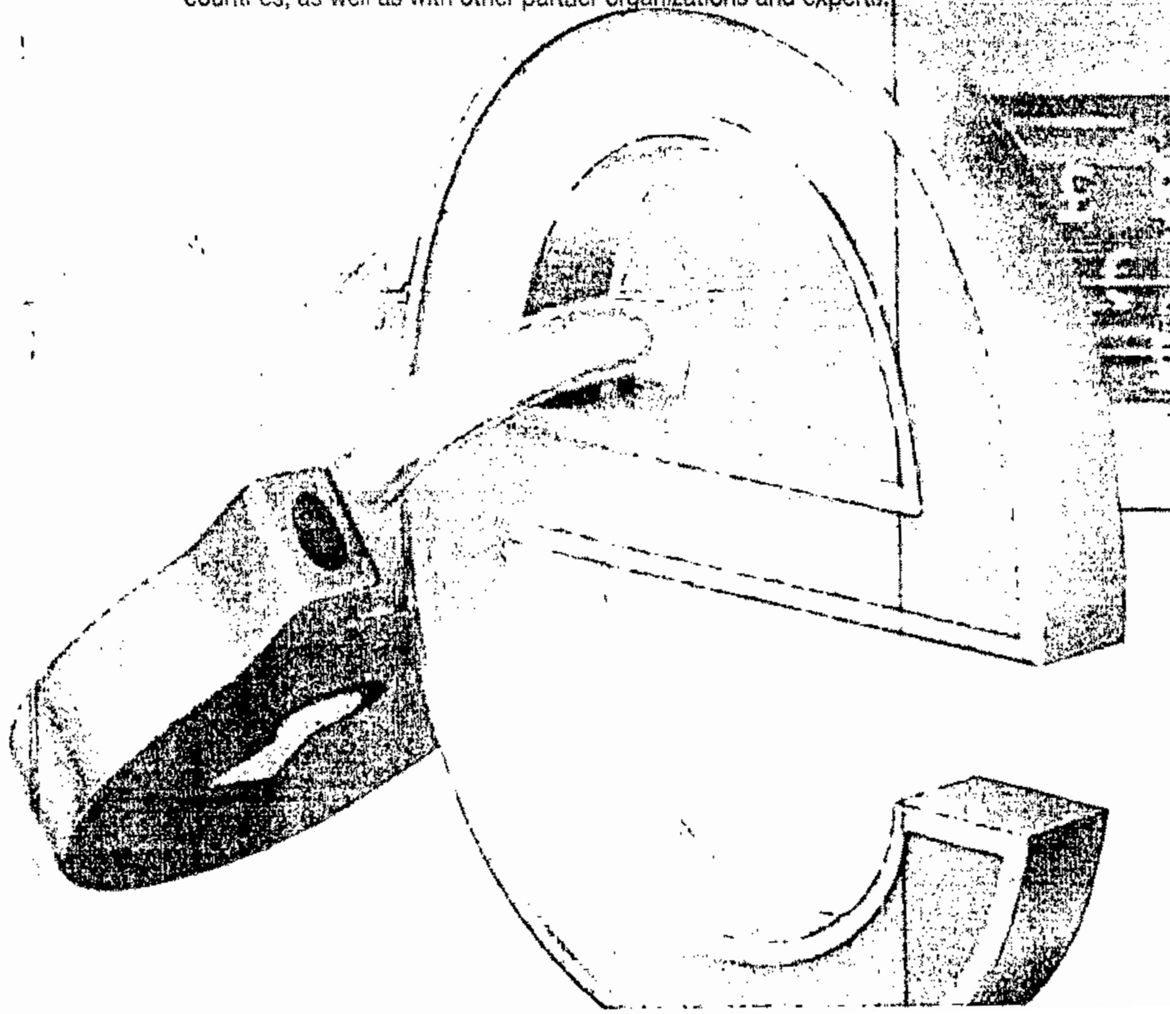
5

MAPPING THE LEGAL LANDSCAPE FOR E-COMMERCE

Security and trust are fundamental for creating an environment conducive to e-commerce. Online fraud and data breaches are growing concerns for both consumers and enterprises, requiring adequate legal responses at national and international levels. Against this background, this chapter examines key legal issues that need to be addressed to facilitate e-commerce and to make interaction on the Internet more trustworthy in general. Special attention is given to e-commerce legal frameworks on electronic transactions, consumer protection, privacy and date protection, and cybercrime.

This chapter presents the result of UNCTAD research into the current state of e-commerce laws in these areas, highlighting progress made and the remaining gaps. It discusses possible options for achieving effective implementation and enforcement of the relevant laws and makes recommendations aimed especially at facilitating cross-border transactions. The analysis drews substantially on UNCTAD's interaction with regional groups in developing countries, as well as with other partner organizations and experts.



A. LEGAL ISSUES AND CHALLENGES FOR E-COMMERCE

While the adoption of laws may not be a prerequisite for e-commerce to commence, they are essential for its sustainable growth. A supportive legal environment is crucial to create trust online and to secure electronic interactions between enterprises, citizens and public authorities. The extent to which regions and countries have relevant frameworks in place, as well as whether such frameworks are effectively implemented and enforced, varies considerably. However, there is no ideal legal landscape. In determining how to shape it, consideration should be given to existing laws and the peculiarities of the national environment, as well as international and regional legal frameworks where they exist. Some countries have enacted e-commerce-specific regulation while others have amended existing legislation or developed principles or guidelines as a minimum requirement. It is equally possible to observe overlaps between legal regimes. In mapping the global e-commerce legal landscape, UNCTAD's focus has been on the legislation that is specifically dedicated to e-commerce as well as legislation adapted to the online environment.

Three general comments can be made in terms of the context of this chapter. First, the phrase "legal landscape" is used to encompass a broad range of different means of regulating behaviour, including public law measures (for example, statutes, decrees and regulations), private law agreements (for example, contracts), as well as standards, codes of practice and other non-binding, self-regulatory approaches. Second, when referring to the enforcement of laws, a similarly broad approach is taken, for which determination before a court of law is the ultimate, and rare, outcome. Enforcement can also arise through the use of innovative alternative dispute resolution forums, as well as compliance driven by corporate social responsibility policies or concerns about adverse publicity. Third, legal measures generally target different parts of the e-commerce transaction value chain in pursuit of different objectives. So, for example, consumer protection measures against payment fraud can engender trust in consumers, while establishing legal certainty can encourage foreign investment in domestic service providers.

Research by UNCTAD shows that the availability of relevant laws in four legal areas that are essential for increasing users' confidence in e-commerce – e-transaction, consumer protection, privacy and data protection, and cybercrime – is generally high in developed countries, but inadequate in many other parts of the world (table V.1).

Among the four areas, adoption is generally the highest for e-transaction laws and the lowest for laws protecting consumers online. This may partly reflect the unavailability of data for some countries. As the data reported in table V.1 (and in annex 3) will be regularly updated, member States are encouraged to provide any missing information on their e-commerce legislation to the UNCTAD secretariat.

The patterns vary by region. For example, in Central America, seven out of eight countries have consumer protection legislation in place, but most lack laws related to data protection and cybercrime. The subregion with the weakest coverage of e-commerce legislation is Middle Africa, where only two out of nine countries have laws related to e-transactions, consumer protection online and data protection, and only one has cybercrime legislation in place.

Governments of developing countries face various challenges when seeking to adopt (figure V.1) and enforce (figure V.2.) e-commerce legislation. Laws are often adopted too late by Governments attempting to keep up with dynamic and unpredictable technological advancements. By the time the laws are passed they are often obsolete, and the activities that they seek to regulate may have changed. Regional efforts to create harmonized principles are often even more delayed, resulting in variations of legal frameworks among nation States within particular regions. For instance, the African Union Convention on Cyber Security and Personal Data Protection was adopted only in June 2014. Furthermore, in a bid to mitigate costs, traditional institutions that lack capacity are often given a new e-commerce mandate without the provision of additional resources. This frequently results in the new mandate being relegated to the non-core functions of the institution.

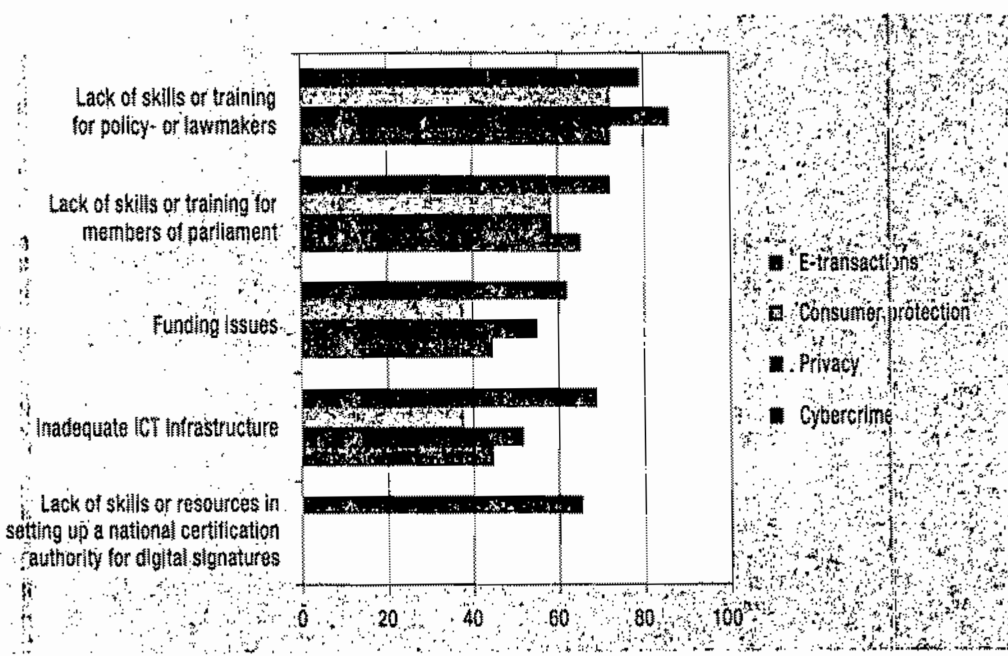
Surveys by UNCTAD of government representatives in 38 countries in Africa, Asia, and Latin America and the Caribbean[1] point to the need to build awareness and knowledge among lawmakers and the judiciary in order to formulate informed policies and laws in the area of e-commerce and to enforce them effectively.

Table V.1. Share of economies with relevant e-commerce legislation, by region, 2014 (per cent)

	Countries (number)	E-transaction laws (%)	Consumer protection laws (%)	Privacy and data protection laws (%)	Cybercrime laws (%)
Developed economies	42	97.6	85.7	97.6	83.3
Developing economies					
Africa	54	46.3	33.3	38.9	40.7
Eastern Africa	18	38.9	16.7	27.8	50.0
Middle Africa	9	22.2	22.2	22.2	11.1
Northern Africa	6	83.3	33.3	50.0	66.7
Southern Africa	5	60.0	40.0	20.0	40.0
Western Africa	16	50.0	56.3	62.5	37.5
Asia and Oceania	48	72.9	37.5	29.2	56.3
Eastern Asia	4	75.0	50.0	25.0	50.0
South-Eastern Asia	11	81.8	81.8	54.5	72.7
Southern Asia	9	77.8	22.2	44.4	66.7
Western Asia	12	91.7	33.3	25.0	58.3
Oceania	12	41.7	8.3	0.0	33.3
Latin America and the Caribbean	33	81.8	54.5	48.5	63.6
Central America	8	75.0	87.5	37.5	37.5
South America	12	83.3	75.0	66.7	75.0
Caribbean	13	84.6	15.4	38.5	69.2
Transition economies	17	100.0	11.8	88.2	70.6
All economies	194	74.7	47.4	55.2	60.3

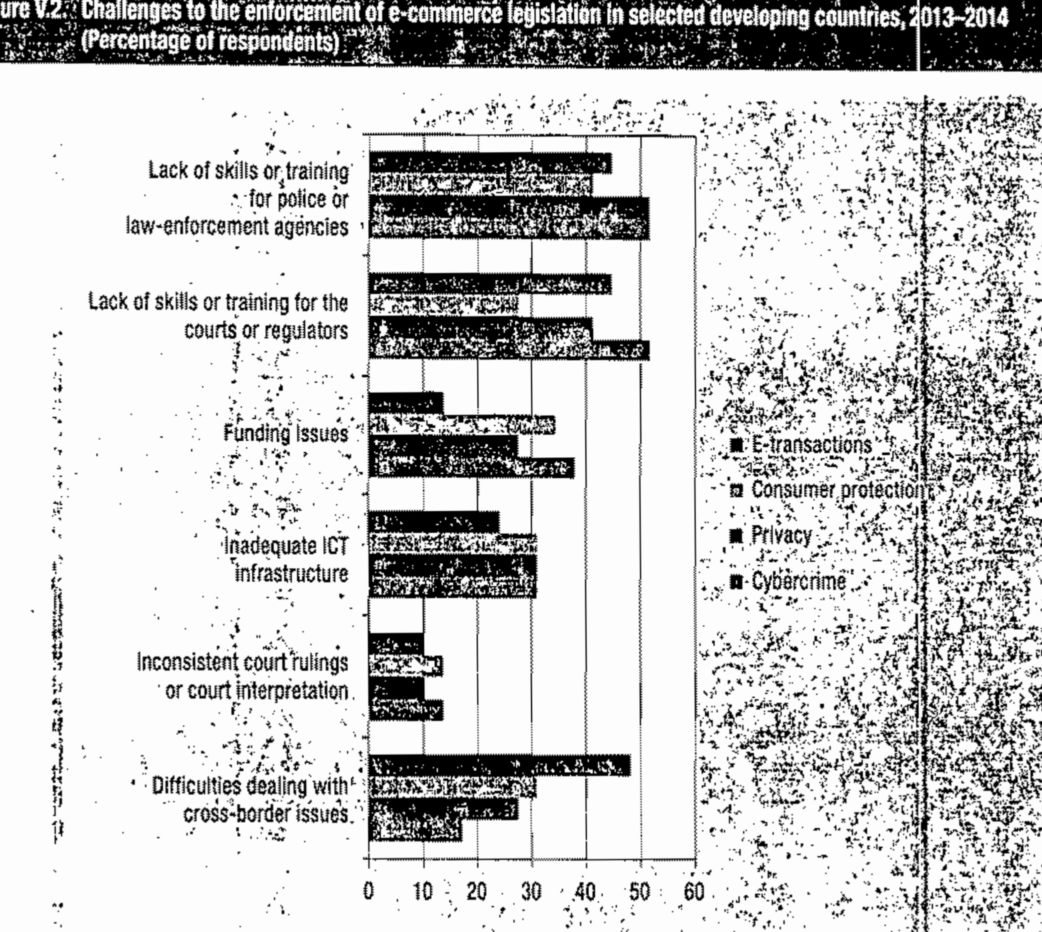
Source: UNCTAD; see annex 3.

Figure V.1. Challenges to the enactment of e-commerce legislation in selected developing countries, 2013–2014 (Percentage of respondents)



Source: UNCTAD.

Figure V.2. Challenges to the enforcement of e-commerce legislation in selected developing countries, 2013–2014 (Percentage of respondents)



Source: UNCTAD.

Three quarters of the representatives reported difficulties in understanding legal issues related to privacy, 68 per cent to cybercrime and over 50 per cent to the two other legal areas. Similarly, between half and two thirds of them noted that a lack of understanding among parliamentarians can delay the adoption of relevant laws. Other challenges included the need for informed regulators and for training law enforcement bodies, as well as finding sufficient resources to create effective legal frameworks and national certification authorities. Finally, several respondents expressed concerns about dealing with cross-border e-commerce, notably in the area of e-transactions and consumer protection.

E-commerce impacts on other areas of law than those highlighted in this chapter, such as taxation, intellectual property, and postal and delivery services. Furthermore, new trends in e-commerce such as mobile payments and other innovative payment systems (see chapter III) may accentuate the need for reviewing existing payments regulations.

B. COMPATIBILITY OF E-TRANSACTION LAWS NEEDED FOR CROSS-BORDER E-COMMERCE

A prerequisite for conducting commercial transactions online is to recognize the legal equivalence between paper-based and electronic forms of exchange, which is the goal of e-transaction laws. E-transaction laws have already been adopted by 145 countries, of which 104 are developing countries (figure V.3). Another 23 have produced draft legislation in this area. That leaves 12 developing countries with no e-transaction laws and 19 for which data are lacking. While four out of five countries in Asia and in Latin America and the Caribbean have adopted such laws, those in Eastern and Middle Africa are lagging behind.

Many national laws in this area have been influenced by the legislative standards prepared by the United

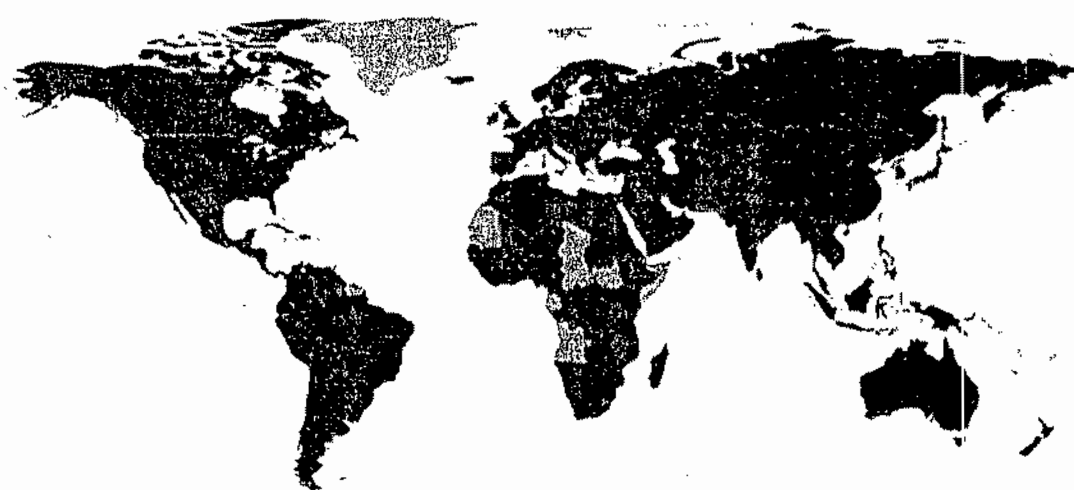
Nations Commission on International Trade Law (UNCITRAL). Its Model Law on Electronic Commerce (1996) (UNCITRAL, 1999) has been enacted in more than 60 jurisdictions.[2] Meanwhile, 29 jurisdictions have based their legislation on the Commission's Model Law on Electronic Signature (2001) (UNCITRAL, 2002).[3] Additionally, the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC) has been signed by 18 States and acceded to or ratified by six (UNCITRAL, 2007).[4] The ECC applies only at the international level and only to the six States parties.[5] However, several other States have incorporated some or all of the substantive provisions of the ECC in their national laws.

Jurisdictions that have adopted the Model Laws or the ECC share common elements in their electronic contracting laws, helping to facilitate cross-border e-commerce. They embrace the principles of technology neutrality, non-discrimination of electronic communications and functional equivalence. But despite progress in the adoption of e-transaction laws, three major issues remain.

First, several e-transaction laws address only the electronic signature (e-signature) component (authentication) without addressing other important terms of a contract in electronic form. They are silent on issues such as the time and place of dispatch and receipt, acknowledgment of receipt, party location and the use of automated message systems. Similarly, most e-transaction laws do not deal with international aspects of e-commerce, such as choice of law, which is one of the potential issues of conflict in cross-border e-commerce. Moreover, while several laws have a provision on cross-border recognition of e-signatures, most of them are not implemented as they require a mutual recognition system that can be burdensome to implement (Castellani, 2010).

Second, there is variation in terms of national implementation of fundamental principles, notably technology neutrality in the use of e-signatures. Many countries have enacted technology-specific legislation based on e-signatures, such as public key infrastructure (PKI).[151] This applies, for example, to some member States of the Commonwealth of Independent States and of ECOWAS.[152] Commonwealth of Independent States member States are required to set up certifying bodies that create digital signatures based on cryptography. Some laws envisage that only these digital signatures will be recognized as having a mandatory force. However, there may be a trend towards more technology-neutral e-signature laws. For instance, the Russian Federation in 2011 amended its law to recognize all forms of e-signatures, and it also adopted the ECC, which enables cross-border recognition of e-signatures on a technology-neutral basis.

Figure V.3. World map of e-transaction laws, 2014



Legend
Dark blue – countries with legislation
Light blue – countries with draft legislation
Violet – countries with no legislation
Grey – countries with no data

Source: UNCTAD; see annex 3.

Laws often require the establishment of a national certification authority. However, due to the human and financial costs involved, certification authorities, especially in developing countries, have sometimes not been set up, or have been set up only after an extended period of time. In such cases, e-transactions may lack legal recognition when the intervention of the national certification authority is required to give legal validity to the transaction. In addition, a requirement to use cryptographic systems when conducting e-commerce or e-government operations can represent a barrier to online transactions. It could, for example, hinder foreign bidders from participating in public procurement, unless legal recognition of the relevant foreign PKI has been established.

Even in countries that have adopted provisions based on UNCITRAL or other uniform texts, variations exist, posing challenges for both domestic and cross-border e-commerce. Different e-transaction laws provide different standards for what constitutes an e-signature. The case of the European Union is illustrative. Its member States were required to implement the European Union Directive 1999/93/EC on a Community Framework for Electronic Signatures, which established the legal framework for e-signatures and certification services to be legally recognized within and across European Union member States. However, as the national regimes adopted to implement the Directive were not uniform, the European Parliament and the Council of the European Union in July 2014 adopted the Regulation on Electronic Identification and Trust Services for Electronic Transactions,[8] which applies the principle of technology neutrality by avoiding requirements that could only be met by a specific technology. This regulation also sets conditions for mutual recognition of electronic identification in a legal instrument that is directly applicable in all European Union member States. Another example is the ASEAN, in which member States recognize different types of signatures (table V.2).

The third issue concerns the lack of capacity regarding the enforcement of e-transaction laws. Judges and practitioners often have limited knowledge of and experience with e-transactions (figures V.1 and V.2). As a result, and especially in developing countries, companies may be reluctant to embrace the use of electronic means. A decision illustrating the challenges for both legislators and judges when departing from uniform texts based on international best-practice models is provided in box V.1.

C. COVERAGE OF CONSUMER PROTECTION ONLINE IS PATCHY

Consumer policy seeks to address imbalances between businesses and consumers in all forms of commerce by ensuring that consumers are

Table V.2. Types of e-signatures recognized by law in ASEAN member States, 2012

	All legal signatures	All legal signatures, but advanced/qualified signatures are associated with legal presumptions, while simple signatures are not ("two-tier approach")	Only advanced/ qualified signatures	Only signatures associated with a specific technology (e.g., PKI)
Brunei Darussalam		X		
Cambodia				
Indonesia		X		
Lao People's Democratic Republic		X		
Malaysia				X
Myanmar	X			
Philippines				X
Singapore		X		
Thailand	X			
Viet Nam				X

Source: UNCTAD (2013a).

adequately protected against misleading, fraudulent and unfair commercial practices; empowered through awareness and education; and provided with effective redress when problems arise. Given the nature of the Internet, where important information on the seller (such as identity, location and credibility) can easily be concealed, and where complex and lengthy terms and conditions are used that consumers may not be able to access easily or in a timely manner, information asymmetry is accentuated in the case of e-commerce. Consumers are more vulnerable online to deceptive and fraudulent activities. Consumer protection laws can also help businesses engaged in e-commerce to clarify the requirements of doing business online within a particular jurisdiction. Therefore, consumer laws, policies and regulations may at the same time outline consumers' rights and business practices to be expected online, limit fraudulent and misleading commercial conduct and help businesses develop self-regulatory regimes (OECD, 2000a).

Despite the importance of consumer confidence for B2C e-commerce (see chapter I), the global map of consumer protection legislation indicates that many developing and transition economies still lack laws in this area (figure V.4). Out of the 119 countries for which data are available, 93 (of which 58 are developing or transition economies) have adopted consumer protection legislation that relates to e-commerce. In as many as 73 countries, it has not been possible to obtain data, however. This may suggest that consumer protection online has not been fully addressed.[9]

Box V.1. MCC Industrial Sales Corporation versus Ssangyong Corporation

In the case of *MCC Industrial Sales Corporation versus Ssangyong Corporation* (17 October 2007), the Philippines Supreme Court found that the Philippine e-commerce legislation did not include coverage of fax messages as the legislation had used the words "electronic data message" rather than the term "data message" that is used in the UNCITRAL Model Law on Electronic Commerce. The Philippines law had also removed references to example technologies such as "electronic data interchange, telegram, telex or telecopy" that are included in the Model Law. The Supreme Court therefore interpreted that these changes were a deliberate attempt to restrict the e-commerce legislation to purely electronic messages such as e-mail.

Source: UNCTAD (2013a).

In terms of regional patterns, the incidence of consumer protection legislation in Africa is particularly low. Only 19 of the 54 African countries have adopted such laws. The coverage is higher in Latin America with 16 out of the 20 countries having relevant legislation in place. For Oceania and most transition economies, data on the state of consumer protection legislation could not be obtained.

Cross-border transactions account for a significant share of e-commerce in a number of developing countries (chapter II), underlining the importance of ensuring that online shoppers are protected for both domestic and cross-border purchases. Differences in the way countries adopt relevant provisions can hamper cross-border trade. These may be related to the rights and obligations of consumers and businesses, what are to be considered acceptable terms and conditions, disclosure obligations and effective international redress mechanisms.

In the European Union, for example, enterprises have to operate with 28 different sets of national rules for conducting cross-border trade. They therefore need to identify the provisions of the applicable laws of particular countries, and assume the costs associated with translation, legal advice and adaptation of contracts. This adds costs, complexity and legal uncertainty. In a 2011 survey of cross-border trade, 44 per cent of consumers said that uncertainty about their rights had discouraged them from buying from another European Union country. A third of the consumers surveyed said they would consider buying online from another European Union country if uniform European rules applied, but only 7 per cent actually did (European Commission, 2011). To try to remedy this situation, the European Commission has proposed a Common European Sales Law.[10] This law would give traders the option to sell their products to citizens in another member State on the basis of a single set of contract law rules which would stand as an alternative alongside the national contract laws. Parties to a cross-border sales contract anywhere in the European Union would be able to choose, by express agreement, to apply the Common European Sales Law.

Effective enforcement for consumers is generally a challenge not least since B2C e-commerce normally involves low-value transactions and as such court actions are too costly. Cross-border enforcement has the added challenge of jurisdiction and applicable law issues as well as of requiring cooperation between

Figure V.4. World map of laws addressing consumer protection online, 2014

Legend
Dark blue – countries with legislation
Light blue – countries with draft legislation
Violet – countries with no legislation
Grey – countries with no data

Source: UNCTAD; see annex 3.

national enforcement agencies.[11] Some national authorities have set up semi-formal cooperation mechanisms and networks to serve as non-legal, political channels of cooperation.

For example, the International Consumer Protection and Enforcement Network (ICPEN) is a network of public authorities involved in the enforcement of fair trade practice laws and other consumer protection activities, comprised of 56 member countries and organizations including 24 developing countries.[12] Its main objective is to identify ways to prevent and redress deceptive marketing practices in an international context. ICPEN has developed the econsumer.gov initiative to enhance consumer protection and consumer confidence in e-commerce. The website permits individuals to file complaints online at a single location (http://www.econsumer.gov (accessed 30 January 2015)). As of 2014, it comprised 30 national authorities, all of which are also ICPEN members. In 2013, the initiative received 23,437 complaints (table V.3).[13] The importance of cross-border laws and enforcement measures is illustrated by the fact that, whereas almost 4,000 complaints were made against e-commerce companies in China in 2013, none of the top 10 country complaints were filed by residents in that country.

In developed countries, self-regulation is the most common form of enforcement for B2C transactions, with e-commerce companies establishing codes of conduct for businesses using their platforms. Some platforms employ mechanisms that may affect a seller's reputation, such as trust marks or customer review boards. Enforcement via payment mechanisms is another option in some developed countries. For example, in the United Kingdom credit card companies are jointly and severally liable with sellers to repay certain payments made via credit card.[14]

The main international reference frameworks for the protection of consumers online are the Guidelines for Consumer Protection in the Context of Electronic Commerce (OECD Guidelines) (OECD, 2000b) and the United Nations Guidelines on Consumer Protection (UNGCP) (United Nations, 2003), which are both being revised (see below).

D. DATA PROTECTION LAWS ARE SPREADING RAPIDLY

In the digital economy, personal data have become the fuel driving much commercial activity online. Every day, vast amounts of information are transmitted, stored and collected online, enabled by improvements in computing and communication power. In this environment, security of information is of growing concern to Governments, enterprises and consumers alike. Of equal concern is the collection, use and sharing of personal information

Table V.3. Top 10 locations of consumers and companies involved in online complaints, 2013

Top consumer locations	Number of complaints	Top company locations	Number of complaints
United States	13 445	United States	4 731
Australia	1 914	China	3 996
France	1 100	United Kingdom	1 213
United Kingdom	767	India	469
Canada	694	Canada	285
Brazil	555	Australia	264
Israel	448	France	246
Argentina	341	Germany	220
India	311	Mexico	158
Spain	295	Spain	144

Source: econsumer.gov/Federal Trade Commission.

to third parties without notice or consent of consumers. The use of cloud services provided across jurisdictions, and the growing number of data breaches accentuate the need for adequate policy responses (UNCTAD, 2013b). Analyses of "big data" aimed at understanding and influencing consumer behaviour for commercial profit may further exacerbate such concerns. Whereas organizations' goals are to avoid fines, potential lawsuits, and reputation damage, consumers tend to worry most about what they perceive to be questionable or unethical practices, which may not necessarily be illegal (Kshetri, 2014).

According to one source, more than 2,100 incidents were reported in 2013 through which some 822 million records were exposed (Risk Based Security, 2014). In one major incident, as many as 152 million names, customer identities, encrypted passwords, debit or credit card numbers and other information relating to customer orders were exposed. The business sector was the target for 53 per cent of the incidents, followed by Governments (19 per cent). About 60 per cent of the incidents were the result of hacking.[160] In terms of geographical patterns, the United States was by far the most targeted country, accounting for almost half of the known cases (table V.4). The most common types of data exposed were passwords, names, e-mails and user names (figure V.5).

As shown in figure V.6, 107 countries (of which 51 developing countries) have put in place legislation to secure the protection of data and privacy. In another 33 developing countries draft bills are pending enactment. In this area, Asia and Africa offer a similar level of adoption, with less than 40 per cent of countries having a law in place.

Companies also need to adopt policies to keep information secure, put in place technical safeguards, and develop response plans for data security incidents to avoid fraudulent, deceptive and unfair practices. In view of the nascent stage of privacy and data protection laws in sub-Saharan Africa, some e-commerce companies have proactively adopted international best practices and security standards (box V.2). Where privacy and consumer protection is difficult to guarantee due to the nature of the content model, service providers may need to take extra measures to educate buyers and sellers on how to recognize and protect themselves from fraud.

The main international reference frameworks used for privacy and data protection are the OECD Guidelines, the European Union Data Protection Directive and the Asia-Pacific Economic Cooperation Privacy Framework. While there is broad agreement on basic principles, there is no consensus on their application. Some data protection regimes (so-called "omnibus regimes") apply equally to those processing personal data. Other regimes apply different rules to specified sectors (for example, the health sector), types of processing entity (for example, public authorities) or categories of data (for example, data about children). In such jurisdictions, other sectors are not subject to regulatory controls at all.

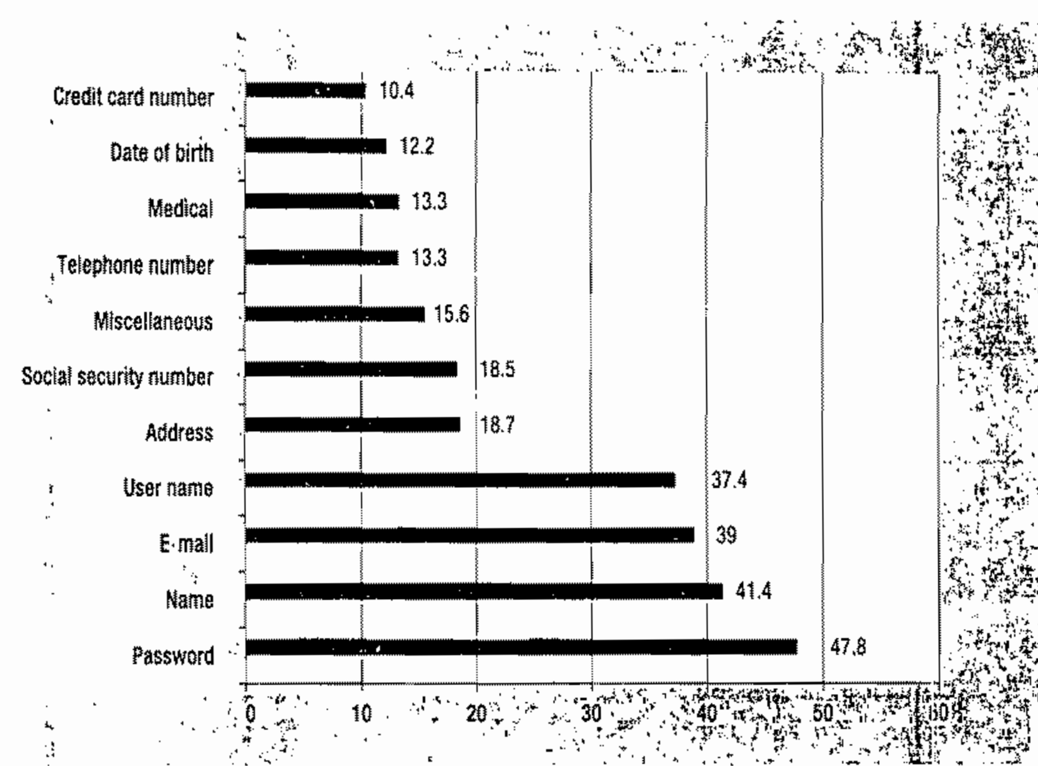
A distinction can be made between regimes that operate primarily through enforcement actions brought by individuals or their representative groups, and those that grant enforcement powers

Table V.4. Incidents reported per country, 2013

Country	Number of incidents	Percentage of incidents (%)
United States	1054	48.7
United Kingdom	20	5.5
Canada	58	2.7
India	50	2.3
Brazil	44	2
Germany	35	1.6
Australia	30	1.4
Italy	29	1.3
France	29	1.3
New Zealand	23	1.1

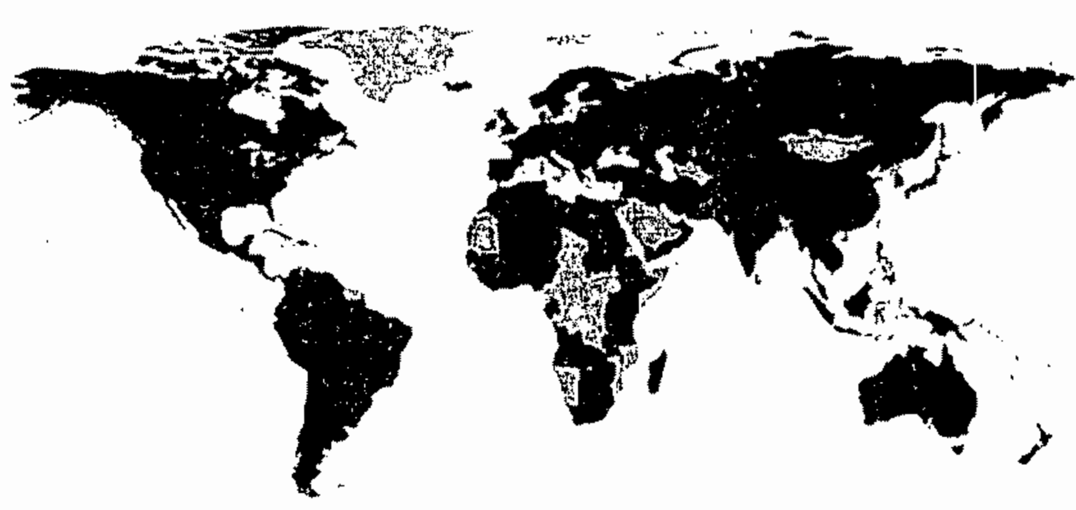
Source: Risk Based Security (2014).

Figure V.5. Incidents by type of data exposed in 2013 (per cent)



Source: Risk Based Security (2014).

Figure V.6. World map of data protection/privacy laws, 2014



Legend
Dark blue – countries with legislation
Light blue – countries with draft legislation
Violet – countries with no legislation
Grey – countries with no data

Source: UNCTAD; see annex 3.

Box V.2. Company responses to data protection and privacy in East Africa

In emerging e-commerce in sub-Saharan Africa, data breaches have thus far been largely offline, linked to automatic-teller-machine and point-of-sale terminal fraud. There have been various incidents of skimming devices fit at record a payment card's details. Online fraud also occurs, and its prevalence will increase as more and more consumers come online. Several e-commerce marketplaces have put in place mechanisms to handle the risk of fraud.

OLX – an online classifieds site present in Kenya and many other countries – adheres to the Safe Harbour Privacy Principles of notice, choice, onward transfer, security, data integrity, access and enforcement. In its terms of service it outlines how data are collected, used and shared, as well as what measures are taken to protect an individual's data. If users suspect that their privacy has been violated or otherwise compromised, OLX encourages them to report the issue with the subject line "privacy policy" using OLX's "legal issues report form".

3G Direct Pay is an e-commerce payment gateway that serves more than 300 travel and tour operators throughout East Africa. It approaches data security in much the same way as a bank. As a card processor, it handles sensitive payment card data that, if stolen, can be used to initiate card payments without the card owner's consent. To mitigate this, 3G Direct Pay has implemented a suite of security features to encrypt and protect data from end to end, complying with level 1 of the Payment Card Industry Data Security Standard (see https://www.pcisecuritystandards.org (accessed 30 January 2015)). The company also proactively monitors card usage trends to detect and mitigate fraud attempts.

According to its privacy policy, Zoom Tanzania – a horizontal classifieds service – commits to never sharing personal details "except when required by law" or with the user's express permission. The company's business model is to encourage user-generated content and then sell advertising space through an internal advertising network, which enables it to advertise to users without compromising or sharing their personal information.

Source: UNCTAD.

to a specialized supervisory authority that exercises ongoing oversight concerning the conduct of those that process personal data. An additional challenge for Governments in developing countries is the need to set up regulatory agencies.

E. CYBERCRIME – A GLOBAL PRIORITY

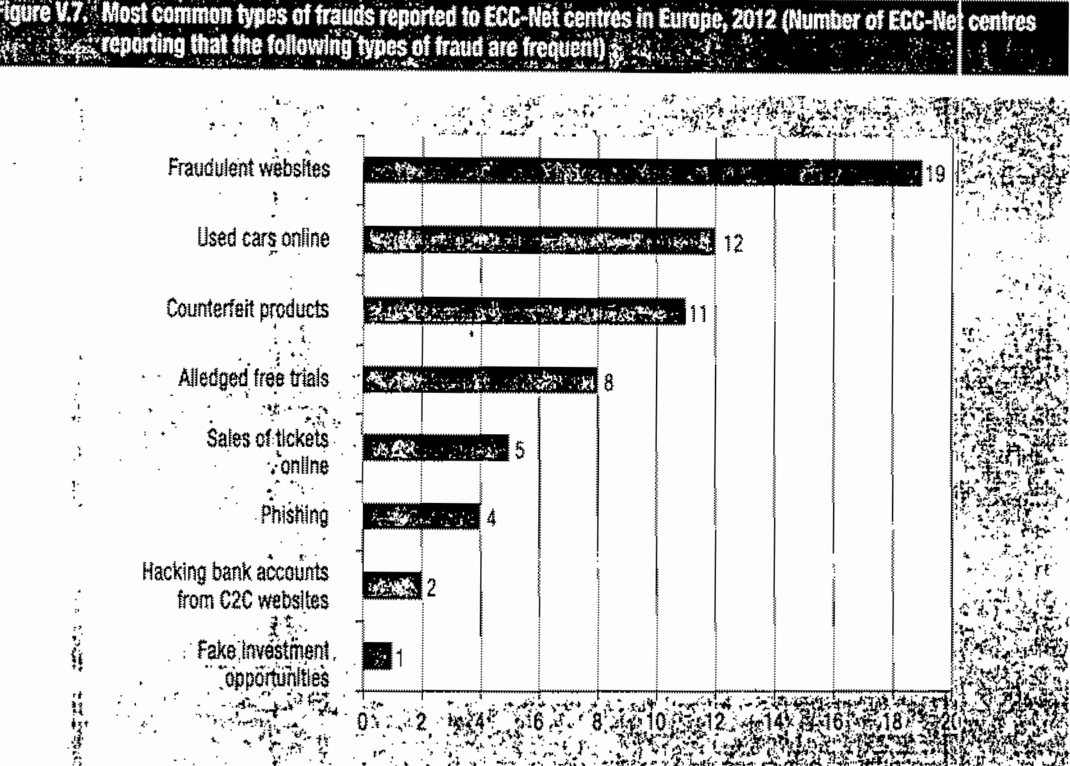
Cybercrime is of growing concern to countries at all levels of development and affects both buyers and sellers. In 2012, an estimated $3.5 billion was lost in supplier revenue due to online fraud (CyberSource, 2013). In Europe, the most common frauds reported by the European Consumer Centres Network (ECC-Net) were related to fraudulent websites, used cars online and counterfeit products (figure V.7). A common denominator among them is that consumers are lured by the advertisement of cheap or free products and the preferred method of payment for the fraudsters is money transfer.

Such incidents highlight the challenges facing consumers online. While some crimes committed on the Internet have been around for many years, their use has rapidly expanded, in terms of the number of incidents and geographic reach. Cybercrimes can be committed against several persons in many countries without the criminal even having to leave home. Cybercriminals may route their communications through local phone companies, long distance carriers, Internet service providers, and wireless and satellite networks, and may go through different computers located in multiple countries before attacking a particular system. Evidence may be stored on a computer in a different country from where the criminal act was executed.

Cybercrimes are targeting laptops, tablets, mobile phones and entire networks. Mobile merchants are reported to be incurring the greatest fraud losses as a share of revenue among all merchant segments (LexisNexis, 2013). This represents a particular challenge for developing countries in which mobile phones are the key device for e-commerce and related payments. Moreover, developing countries are increasingly being used by cybercriminals due primarily to lax enforcement by authorities. According to one study, the top five hotspots for cybercrime are the Russian Federation, China, Brazil, Nigeria and Viet Nam.[6]

Cybercrime laws are rapidly being enacted. As of November 2014, 117 countries (of which 82 developing and transition economies) had enacted such legislation, and another 27 countries had draft legislation underway. More than 30 countries had no cybercrime legislation (figure V.8). Africa and Oceania

Figure V.7. Most common types of frauds reported to ECC-Net centres in Europe, 2012 (Number of ECC-Net centres reporting that the following types of fraud are frequent)



Source: ECC-Net (2013).

are the regions for which the largest number of countries still need to adopt cybercrime laws. Some 70 per cent of the transition economies have adopted cybercrime legislation and in Latin America the share is just over 63 per cent.

The most significant international instrument in the field is the Council of Europe Convention on Cybercrime (2001). This has been followed in many developing regions by similar instruments, including the Commonwealth Model Law on Computer and Computer-related Crime (2002) and the African Union Convention on Cyber Security and Personal Data Protection, adopted in June 2014. There are also initiatives at the European level.[17]

Developing countries face several issues, including the lack of international legal frameworks, and a lack of capacity and infrastructure to respond effectively to cyberattacks.[18] Cybercrime presents complicated cross-border enforcement and jurisdictional problems. Particular efforts are needed in the area of law enforcement and to strengthen the capacity of computer emergency response teams. International coordination and cooperation are critical in this context to create a safe business environment promoting faster responses to cybercrime and sharing of information, thus giving countries the opportunity to react quickly and efficiently in combating cybercrime.

F. CONCLUSIONS AND RECOMMENDATIONS

While legal harmonization has been a much touted goal of policymakers in the past, it is increasingly recognized that compatibility and interoperability between different legal systems is a more achievable target and one which will facilitate e-commerce. Even in developed regions with a certain degree of legal harmonization, different

Box V.3. Online fraud in India

Like other countries, India is affected by e-commerce fraud such as identity theft and scams. However, only a small proportion of the cases are reported, and there have been few convictions. A 2011 survey of young professionals in India revealed that one out of four were victims of identity fraud. Another study found that while the amount of monetary loss due to identity theft has remained steady, the frequency of such incidents increased by 13 per cent in 2011 (KPMG, 2012).

Source: UNCTAD.

Figure V.8. World map of cybercrime laws, 2014

Legend
Dark blue – countries with legislation
Light blue – countries with draft legislation
Violet – countries with no legislation
Grey – countries with no data

Source: UNCTAD; see annex 3.

legal requirements set in national laws may hamper e-commerce. Despite significant progress in the adoption of laws, and to some extent legal compatibility in many regions, there is still a need to align laws with international legal instruments to favour cross-border e-commerce. While preparing or revising legislation, countries should seek to benefit from discussions that are taking place at the international level, such as the OECD, the United Nations Guidelines on Consumer Protection, UNCITRAL and WTO.

Several Governments, especially in developing countries, need first and foremost to acknowledge the importance of e-commerce and allocate sufficient resources towards its development. Furthermore, they need to adopt baseline laws in legal areas where they do not exist. In doing so, developing countries should coordinate among institutions tasked with different legislation on e-commerce, cloud computing and e-government to adopt common key principles that will facilitate the delivery of all these services. Governments of developing countries should also ensure enforcement of laws, the next great challenge awaiting them, both domestically and cross border.

The five recommendations presented below address selected issues currently affecting e-commerce developments, with special consideration given to developing countries.

1. Align e-transaction laws

Ensuring regional and global compatibility of e-transaction laws is a key challenge due to the increased use of electronic technologies by Governments, companies and citizens. Therefore, when preparing or revising e-commerce legislation, lawmakers should consider that of other countries in the same region or of trading partners to have compatible legal systems and trade policies. Legal recognition of e-signatures, electronic contracts and evidence at a national level should be extended to those originating in other jurisdictions.

Over the past 10 years, advances towards harmonization have been made in several regions. However, as different standards are used, there is still a need to make laws more compatible internationally. The ECC can help in promoting compatibility of laws. It proposes a set of core legal provisions enabling cross-border e-commerce. Countries should consider aligning their legislation on e-transactions with the provisions of this Convention. Becoming a party to it will favour regional and international compatibility, including the cross-border recognition of e-signatures, as the Convention provides principles that could form the basis of a mutual recognition system (article 9(3)) (box V.4).[19]

2. Streamline consumer protection policies

Differences in national consumer protection laws are a challenge for cross-border e-commerce. Efforts at harmonizing consumer protection laws in e-commerce are carried out by various regional groupings.

At the end of 2014, the OECD was in the process of reviewing its Guidelines (OECD, 2000b). The objective is to reflect relevant policy principles pertaining to B2C e-commerce in a number of OECD acts since their adoption in 1999.[20] At the global level, the United Nations is also conducting consultations on the revision of the UNGCP (United Nations, 2003) in the light of market and regulatory developments, including those related to e-commerce. The consultations aim to capture the needs of developing countries. The revised guidelines may be available by 2016. Salient topics discussed during the consultations include:[21] effective protection that is no less favourable to that of other forms of commerce; rights and obligations of consumers and businesses; vulnerable consumers; mobile platforms; payment; alternative dispute resolution; consumer education and awareness; data and privacy protection; applicable law and jurisdiction; and bilateral, regional and international cooperation.

The revised UNGCP will only give policy advice and will therefore not create a conflict with either national laws or regional frameworks/instruments. Countries that are preparing or revising their consumer protection laws for e-commerce may consider aligning their legislation with the UNGCP and OECD Guidelines to encourage harmonization of consumer protection legislation and foster consumer confidence in e-commerce.

There is a need to set up consumer protection agencies in several developing countries and to strengthen existing ones in other countries. In addition, information sharing would facilitate cross-border e-commerce. This would require an agreement between consumer protection agencies in a given region, complemented by appropriate investigation and referral tools. Linking up agencies through networks, such as ICPEN, can help national agencies to keep abreast of new legal regional or international developments, as well as to share experiences and bring out solutions for e-commerce users.

The use of alternative dispute resolution and redress schemes that are affordable and easy to use is also to be recommended. Some of the most effective schemes are currently embedded in self-regulatory bodies, law enforcement agencies, ombudsmen and other entities. The use of trustmarks, such as the eConfianza (www.econfianza.org) initiative of the Instituto Latinamericano de Comercio Electrónico (eInstituto),[22] is also worth exploring. This non-profit organization has created a code of good practices to guide companies on how to address consumer needs properly when designing their online businesses, and offers an online dispute resolution tool called Pactanda (www.pactanda.com).

3. Streamlining data protection and cybercrime policies

The development and adoption of legal frameworks for protecting personal data and for combating cybercrime at the national level should not be done in isolation. Achieving the compatibility of laws and

Box V.4. Integrating developing countries in the regional and global cyber economy

The ECC aims to promote the establishment of uniform legislation and to enhance legal certainty and commercial predictability where electronic communications are used in relation to international contracts. The Convention fulfils four main goals:

- It facilitates the use of electronic communications contained in treaties drafted before the widespread use of those communications;
- It reinforces the level of uniformity in the implementation of the UNCITRAL Model Laws;
- It updates certain provisions of the UNCITRAL Model Laws, such as the location of the parties, the time and place of dispatch and receipt, and the functional equivalence for "signature", which in practice enables cross-border recognition of all types of e-signatures. It also introduces new provisions such as the use of automated message systems, invitation to make offers, and the like;
- It provides core provisions on e-transactions to ensure regional and international harmonization.

Source: UNCTAD, based on United Nations (2007).

policies at the regional and international level is desirable. The establishment of minimum standards helps to ensure cross-border coordination on the design and implementation of relevant legislation and stronger enforcement institutions.

Establishing an efficient data protection regulatory agency can be challenging from both a resource and a political perspective. Lessons may be learned from the telecommunications sector, where such agencies have been widely accepted as a critical component of a successful regulatory regime. Combining regulatory functions between data protection and consumer protection agencies may be a way to reduce the regulatory costs of data protection.

Similarly, comprehensive frameworks for cooperation outreach and enforcement of cybercrime need to be developed. Investigating even a single communication may require cooperation among several national law enforcement agencies (including the private sector). Regional cooperation between cybercrime law enforcement agencies may involve the establishment of common training and resource centres and 24/7 national contact points.

Various security measures – physical, logical or organizational – should be used to protect data against deliberate acts of misuse. Implementing appropriate data security should consider the quality of data, the needs of individual data subjects, the entity processing the personal data and, indeed, society at large. Policymakers are increasingly recognizing the Internet as "critical national infrastructure", over which a rising proportion of economic and social activities are carried out, but also as a "source of vulnerability". Addressing this duality and putting in place adequate data security measures – from the adoption of cybercrime laws to the establishment of computer emergency response teams/computer security incident response teams – should be a core component of the policy response. Public–private partnerships may be important in this context.

4. Strengthening the capacity of lawmakers and judiciary

The judiciary in many developing countries needs to be trained in the area of cyberlaws. Legal issues around e-commerce are still relatively new. Several international and regional organizations, including the Commonwealth secretariat, ITU, UNCITRAL, UNCTAD, the United Nations Office on Drugs and Crime and the Council of Europe can provide assistance to countries and regions in the different legal areas. Increasingly, these agencies are joining forces to maximize their actions (box V.5).

Box V.5. UNCTAD assistance with partners

In support of developing countries' efforts in this area, UNCTAD assists in the preparation and revision of e-commerce laws aligned with international and regional instruments. The assistance provided in the harmonization of e-commerce legislation across regions in the ASEAN, the East African Community (EAC), ECOWAS, Latin America and Central America has created an impetus for countries to push for the adoption of national laws in this area. The work has involved close collaboration with regional institutions such as the African Union Commission, the ASEAN secretariat, the EAC secretariat, the ECOWAS Commission, the Asociación Latinoamericana de Integración and the Secretariat of the Sistema Económico Latinoamericano y del Caribe.

Over sixty countries have to date been engaged with UNCTAD thanks to the support of the Governments of Finland and Spain. Capacity-building activities have strengthened the knowledge of policy and lawmakers on legal issues of e-commerce and international best practice, allowing them to formulate laws in line with their regional frameworks.

Several agencies are assisting developing countries within the scope of their mandates and inter-agency collaboration is growing. Two examples of such cooperation are the briefing of Commonwealth parliamentarians serviced by UNCTAD and organized jointly with the Commonwealth Telecommunication Organization and the Commonwealth Parliamentary Association, at the occasion of the Commonwealth Cybersecurity Forum 2013. Another example is the joint workshop on the harmonization of cyber legislation in ECOWAS (Ghana, March 2014) organized by UNCTAD with UNCITRAL, the African Centre for Cyberlaw and Cybercrime Prevention, the Council of Europe and the Commonwealth Cybercrime Initiative.

UNCTAD has built a network of institutions with which consolidated partnerships are concluded within the different project activities. Many of them contributed to the consolidation of the database used in this chapter. The result of this first ever global mapping is available online and countries are invited and encouraged to contribute to keeping this database up-to-date.

Source: UNCTAD.

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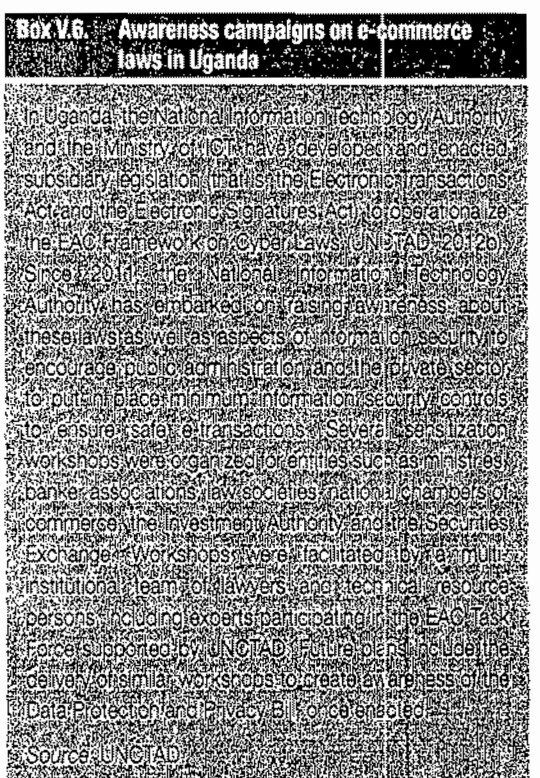
5. Enhancing the awareness of consumers and companies

As the legal environment for e-commerce is evolving, and differs from one jurisdiction to another, consumers and enterprises need to be aware of relevant laws and of means of redress. This is particularly important to build trust in cross-border e-commerce. Industry associations and consumer protection agencies should work together to overcome barriers caused by divergent national legal standards. National public campaigns (including through radio and television programmes) aimed at informing about ways to protect consumers online can be a key element of awareness-raising strategies (box V.6).



Box V.6. Awareness campaigns on e-commerce laws in Uganda

In Uganda, the National Information Technology Authority and the Ministry of ICT have developed and enacted subsidiary legislation (that is, the Electronic Transactions Act and the Electronic Signatures Act) to operationalize the EAC Framework on Cyber Laws (UNCTAD, 2012b). Since 2011, the National Information Technology Authority has embarked on raising awareness about these laws as well as aspects of information security to encourage public administration and the private sector to put in place minimum information security controls to ensure safe e-transactions. Several sensitization workshops were organized for entities such as ministries, banker associations, law societies, national chambers of commerce, the Investment Authority and the Securities Exchange. Workshops were facilitated by a multi-institutional team of lawyers and technical resource persons, including experts participating in the EAC Task Force supported by UNCTAD. Future plans include the delivery of similar workshops to create awareness of the Data Protection and Privacy Bill once enacted.

Source: UNCTAD.

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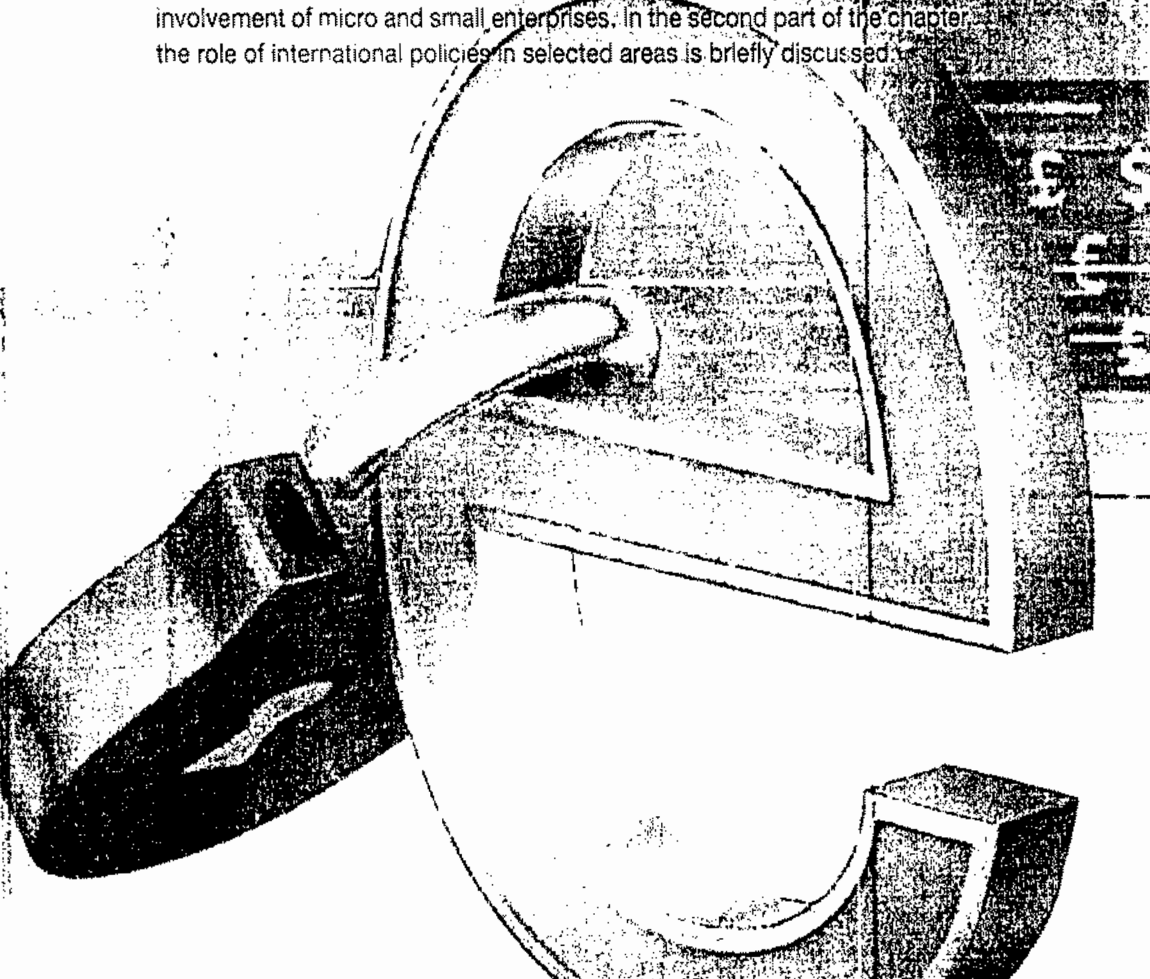
NOTES

1. The surveys were conducted in the regions of ASEAN (in 2013) and the Economic Community of West African States (ECOWAS) (in 2014) and in Latin America and the Caribbean (in 2014).
2. In 1998, Singapore became the first country to enact legislation using the Model Law as a basis; see http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html (accessed 30 January 2015).
3. See http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_status.html (accessed 30 January 2015).
4. The countries are the Congo, the Dominican Republic, Honduras, Montenegro, the Russian Federation and Singapore.
5. See http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention_status.html (accessed 30 January 2015).
6. Public key infrastructure is a cryptographic technique that enables users to securely communicate on an insecure public network and reliably verify the identity of a user via digital signatures.
7. With the exception of Burkina Faso.
8. See http://europa.eu/!ux73KG (accessed 30 January 2015).
9. These findings are supported by a global survey on the status of consumer protection that found that the ICT sector enjoys less consumer protection measures than traditional sectors (Consumers International, 2013).
10. See http://eur-lex.europa.eu/legal-content/en/ALL/;ELX_SESSIONID=9kq3JrXb6922fTl6wCNCyJTyMZn3N6p8lYymnk4b9G32fR21QJhQ!715408534?uri=CELEX:52011DC0636 (accessed 30 January 2015).
11. This has been stressed by delegates in the ASEAN and in Latin America in the context of UNCTAD's assistance; see, for example, UNCTAD (2013a).
12. See https://icpen.org/ (accessed 30 January 2015).
13. See http://www.econsumer.gov/english/resources/trends.shtm (accessed 30 January 2015).
14. Consumer Credit Act 1974, section 75.
15. Hacking here refers to the gaining of access (wanted or unwanted) to a computer and viewing, copying, or creating data (leaving a trace) without the intention of destroying data or maliciously harming the computer.
16. See "The world's top 5 cybercrime hotspots", Time.com, 7 August 2014; available at http://time.com/3087768/the-worlds-5-cybercrime-hotspots/ (accessed 30 January 2015).
17. See OECD (2002) and Directive 2013/40/EU of the European Parliament and the Council of Europe of 12 August 2013 on attacks against information systems; available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0040&from=EN (accessed 30 January 2015).
18. For example, out of Malaysia's 40,000 lawyers, only four were reportedly able to handle cybercrimes in 2008; see "Understanding cybercriminals", Strait Times, 18 February 2008. And in India, the Delhi Police cybercrime cell had only two inspectors as of November 2011; see http://www.hindustantimes.com/India-news/NewDelhi/Cyber-crime-up-by-700-in-Capital/Article1-766172.aspx (accessed 3 February 2015); see also Kshetri (2013).
19. Some countries have already modified their domestic legislation in line with the substantive provisions of the ECC (for example, Singapore and Australia – the latter not being yet a State party to the ECC).
20. Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders; Recommendation of the Council on Cross-border Cooperation on the Enforcement of Laws Against Spam; Recommendation of the Council on the Consumer Dispute Resolution and Redress; and Recommendation of the Council on Consumer Policy Decision Making.
21. See http://unctad.org/Sections/ditc_ccpb/docs/UNGCP_DraftReport2015_en.pdf (accessed 3 February 2015).
22. See www.einstituto.org (accessed 3 February 2015).

6 STRATEGY AND POLICY IMPLICATIONS

As the digital economy expands and more and more business activities are affected, strategies which enable companies across different sectors and sizes to engage in e-commerce are becoming increasingly relevant. In this context, a well-developed national strategy may help enhance the net benefits of e-commerce. Such a strategy needs to facilitate the ability of producers to sell online and of consumers and other buyers to purchase online. Effective national policies in areas such as ICT infrastructure development, logistics and trade facilitation, the legal and regulatory environment, e-procurement, e-payments, platforms, awareness-raising and skills development, in combination with an enabling international environment are essential to enable domestic and cross-border e-commerce.

This final chapter looks at how Governments, in collaboration with other stakeholders, can help create an environment that is more conducive to reaping benefits from e-commerce, taking into account both opportunities and risks. Special attention is devoted to measures to facilitate the effective involvement of micro and small enterprises. In the second part of the chapter, the role of international policies in selected areas is briefly discussed.



A. NATIONAL POLICIES AND STRATEGIES TO ENABLE E-COMMERCE

1. Strategic approaches to the development of e-commerce

(a) Developing a national e-commerce strategy

Governments have a crucial role to play in creating an economic environment conducive to e-commerce and for making e-commerce an integral part of policies toward a more inclusive information society. In this context, they need to identify how e-commerce may support various objectives in the country's national development agenda and ensure that the e-commerce dimension is integrated into national ICT master plans. Clearly defined objectives and recognition of possible concerns are a first step to formulating relevant policies.

Developing a national e-commerce strategy which is effective and actionable is challenging. Though it is essential for countries to learn from the best practices of other countries, there is no one-size-fits-all formula to apply. Subsequently, it is incumbent upon Governments to adapt any approach to their country's capacities, priorities and needs.

First, Governments may want to give special attention to micro and small enterprises as they tend to lag behind in e-commerce and are also among those likely to benefit the most from it. Second, emphasis may be placed on enterprises in specific industries (for example, retail) or certain parts of the country (for example, rural areas). Third, a strategy may distinguish between efforts to promote domestic and cross-border e-commerce as well as between B2B and B2C transactions. Fourth, there may be a need to reflect on how ICT usage is evolving, including with regard to mobile devices, social media and alternative payment solutions. Fifth, there may be a need to encourage the development of e-commerce platforms, delivery systems and payment solutions that are tailored to local needs, languages and cultures, involving both public and private-sector actors. Finally, the strategy may need to address the broader implications of an increased reliance on e-commerce. Implications may relate to the distribution of benefits and costs between different stakeholders, fiscal implications, and societal impacts.

Informed decision-making in this context needs a realistic assessment of where the country stands in terms of its e-commerce readiness. This involves developing an understanding of national needs, characteristics, strengths and weaknesses. Properly identifying the main challenges and barriers, and uncovering the dynamics underpinning them, help to ensure that policy measures adopted will be effective. Any assessment should include a comprehensive review of the evolution of e-commerce, including existing initiatives to support it, and a stocktaking of the resources and capabilities that could contribute to its development. This may require the collection of information through desk research and direct consultations with various actors concerned. The UNCTAD B2C E-commerce Index (chapter III) can serve as a useful tool in this context.

This process will benefit from close dialogue among all relevant stakeholders. Effective multisectoral and interministerial cooperation is necessary for both strategy development and implementation. Examples of ministries that might be affected include those responsible for justice; finance; science, technology and innovation; ICT; international trade; rural development; employment; post and transportation. Other stakeholders that should be involved include relevant government regulatory and promotional agencies, the trade-facilitation committee (UNCTAD, 2014b), the post, national IT associations, chambers of commerce, academia and consumer organizations where they exist.

(b) Implementation, monitoring and follow-up

Due to the changing nature of the ICT and e-commerce landscape, monitoring and follow-up actions are particularly relevant. Relevant performance indicators and realistic targets should therefore be established at the outset. The monitoring exercise may require new efforts to collect data. Few developing countries currently report statistics on basic indicators related to e-commerce. Regular surveys on both the quantitative and qualitative aspects of e-commerce can provide essential information to policymakers, as shown in box VI.1. The use of standard methodologies is recommended to allow for cross-country comparisons.

2. Key policy areas to address in a national strategy

This section proposes eight critical policy areas which are likely to feature in a national e-commerce strategy (figure VI.1). The relative emphasis given to the

respective areas should be informed by the readiness assessment exercise mentioned above.

(a) Affordable ICT infrastructure and services

Improve access to reliable and affordable ICT services: Consistent and affordable ICT services are essential for e-commerce to thrive. At the most basic level, citizens need to be able to communicate via mobile phones. It is increasingly important also for the Internet to be accessible and that data services can be provided in both urban and rural areas, through fixed or mobile networks. Broadband infrastructure is required to seize the full opportunities from e-commerce, including by leveraging cloud solutions and for the purchasing of digital products that require high quality broadband service. Governments in

Box VI.1. Indicators to monitor e-commerce developments

The Partnership on Measuring ICT for Development has proposed a set of internationally comparable indicators to be collected by all countries, based on agreed definitions and suggested breakdowns.[a] They are kept to a minimum to limit the burden on national statistical offices and increase the availability of at least some comparable indicators. Those related to e-commerce are to be included in household and enterprise surveys:

- Proportion of individuals using the Internet, by type of activity, including "Purchasing or ordering goods or services" and "Selling goods or services";
- Proportion of businesses receiving orders over the Internet;
- Proportion of businesses placing orders over the Internet.

For countries interested in obtaining more detailed information on the nature and scope of e-commerce and that have the resources to undertake surveys, it may be useful to consider efforts undertaken by Brazil, the Republic of Korea and the European Union, as illustrated below.

The Brazilian household survey on ICT collects information on the types of products and services acquired through the Internet, on the method of payment, on the problems experienced when purchasing, and on reasons not to shop through the Internet. The business survey on ICT collects data for the following indicators (www.cetic.br):

- Proportion of enterprises that access the Internet, by type of barrier for online sales;
- Proportion of enterprises that did not sell via Internet, by type of barrier – main obstacles.

In the Republic of Korea, the annual Survey on the Information Society includes the following indicators, among others (http://eng.nia.or.kr/):

- Value (percentage) of Internet sales by type of customer (B2B, B2C, B2G);
- Share of Internet sales in total turnover;
- Most important factor considered when deciding to sell goods or services via e-commerce;
- Effects perceived by selling goods and services via e-commerce;
- The way orders for goods and services were received (email, fax, direct contact, other).

The statistical office of the European Union, Eurostat, has collected various e-commerce indicators through business surveys (http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home):

- Enterprises having placed/received orders via computer networks to suppliers/customers located (a) in their own country; (b) in other European Union countries; (c) in the rest of the world;
- Total electronic purchases, excluding VAT;
- Enterprises that have placed orders via a website;
- Enterprises which sold via a website (B2B, B2C, B2G);
- Obstacles that limit or prevent the selling via a website;
- Enterprises' total turnover from e-commerce;
- Sales via a website and via EDI-type messages (percentage of total sales).

Source: UNCTAD.

[a] For detailed methodological recommendations on definitions, subcategories and breakdowns, see ITU (2014b) and UNCTAD (2009).

developing countries are increasingly facilitating the deployment of broadband networks, often through public-private partnerships, and/or with finance derived from government revenues or loans from international financial institutions. International bandwidth has improved in most countries, especially through improved access to submarine cables, and more attention is now being devoted to national broadband networks and to regional interconnection (for example, for landlocked countries). Moreover, given that e-commerce sites require security software, having access to servers using encryption technology for Internet transactions is also important (chapter III).

Implement effective communications regulations: Infrastructure improvements need to be accompanied by competent and effective regulation of the telecommunications markets. This includes liberalization of markets and regulatory intervention to promote competition. Competitive and interoperable ICT markets, facilitated by independent regulators, help to deliver higher-quality, more reliable and affordable services. As broadband usage grows in wireless-dependent developing country markets, policymakers and regulators also need to make radio spectrum available to communications operators to ensure that cloud services can be reliably accessed through wireless networks.

Ensuring access to reliable power: Inadequate power infrastructure is a common bottleneck to ICT use and, by extension, to e-commerce adoption. Power outages are frequent in many developing countries, and smaller countries are often dependent on their neighbours for a substantial part of their power supply.

(b) Logistics and trade facilitation

Strengthen the logistical and transport infrastructure: Smooth transport of goods is imperative for both domestic and cross-border e-commerce. Effective order fulfilment is helped by well-functioning road transport, land ports, postal delivery services and customs. Poor logistics remain a barrier to e-commerce in many developing countries and investment in infrastructure is often much needed, especially outside the urban centres. There may be a lack of parcel delivery services – public and/or private – which can provide quick, traceable and reliable parcel deliveries and geographical coverage. In this context, initiatives to strengthen the postal

Figure VI.1. Strategic framework for promoting e-commerce

Phases for developing a national strategy

Assessment (or reassessment)

Strategy formulation

Implementation

Monitoring

Review for results-based outcome

Eight policy areas for e-commerce growth

Source: UNCTAD.

sector's capacity to support e-commerce can be relevant. The postal system often remains the most cost-effective way to send parcels, including across borders (box VI.2). Further issues to consider include the extent to which competition is permitted in the postal/delivery/courier market, and the possibilities for partnerships between the private sector and local post offices.

Universal address and postcode systems: A national addressing system is important to facilitate e-commerce. While there are examples of private initiatives to address the absence of addressing systems in some countries (see chapter IV), a nationwide, universal system is desirable to avoid fragmentation. In Botswana, for example, the lack of a comprehensive system of street names and property numbering was found to hamper commercial activity. Different service providers, such as telecommunications and other utilities providers, had different profiles for the same customer. Under such a system, service providers do not have a way to authenticate the validity of contact information as provided by customer or users.[1] Against this background, a project was initiated to unify the national addressing system. The UPU can provide technical assistance to member States in the areas of physical addresses, national addressing standards, postcodes and postal databases.[2]

Box VI.2. Facilitating cross-border e-commerce using postal services

By July 2015, posts plan to start offering a new optional parcel service responding to the expanding need among online retailers to move their wares across borders. In November 2014, the Postal Operations Council of UPU approved specifications for a service covering items up to 30 kilograms. It features track-and-trace options and a five-business-day delivery standard from the moment an item arrives in the destination country. Items delivered under the new service will not require a signature on delivery. Starting in 2016, posts will have to provide pre-advice data of package contents to customs authorities, a measure expected to improve customs clearance. The new service is part of a global integrated e-commerce solution developed by the UPU to meet the needs of e-commerce stakeholders. The Postal Operations Council has also validated a merchandise return service, which will make it easier for customers to return unwanted goods to online retailers abroad.

Source: "UPU gives global e-commerce a boost", UPU press release, 4 November 2014.

Adopt efficient trade-facilitation measures: For cross-border e-commerce related to physical goods, bottlenecks in land ports, customs-related problems, complex export procedures and document requirements can represent critical bottlenecks. Issues of international returns and tax refunds also need to be addressed. Efforts to improve trade facilitation, through standardization, harmonization and simplification of trade procedures and documentation, can help developing countries, especially LDCs, to integrate into global supply chains, including through B2B e-commerce (see, for example, box VI.3). UNCTAD's Automated System for Customs Data (ASYCUDA), which automates border procedures and serves to facilitate trade in more than 90 developing countries, has led to significant reductions in the time needed for clearance. In Uganda, for example, the average time from payment to the release of goods from customs dropped from 8.8 days in January 2014 to 3.2 days in June 2014. Moreover, automating and modernizing customs procedures often improve revenue collection as well as reduce the costs of trade.[3]

(c) *Fostering an environment for e-commerce and online payment solutions*

Strengthen the environment for online payments: Enhanced use of electronic payment systems is important for facilitating e-commerce. In countries where credit card use is low, alternative payment solutions – including mobile payments, cash on delivery and escrow arrangements – are also relevant. Limited access to international payment services can represent a significant barrier to e-commerce, especially for micro and small enterprises interested in cross-border e-commerce. Governments should seek to foster a regulatory environment that is conducive to online payments and the development of adequate payment solutions. This is important for consumers and other buyers to feel confident and secure in making purchases online, and for vendors to be assured of payment for delivery of their products and services.

Promote the availability of e-commerce solutions: Although many global e-commerce platforms are becoming more accessible around the world, there are opportunities for e-commerce platforms that are tailored to local needs and opportunities. As noted in earlier chapters, the development of e-commerce platforms has involved both the public sector (including the postal system) and the private sector. For example, foreign investors have contributed greatly to the spread of new e-commerce platforms in sub-Saharan

Box VI.3. Using the postal sector to support exports by micro and small enterprises

International trade is out of reach for many micro and small enterprises. The postal sector can help to make international trade more inclusive in this context. The Exporta Fácil programme was first pioneered by Brazil Post. Between 2002 and 2008, Exporta Fácil enabled over 10,000 small businesses in Brazil, which had never previously exported, to access international markets. Inspired by its success, UPU launched the Easy Export programme to replicate the Brazilian model in other countries. As part of the Integration of Regional Infrastructure in South America initiative, the Governments of 12 South American countries selected 31 projects with a high impact on physical integration in the region. One of them, "Exporting through the Post for MSMEs", seeks to implement a service similar to Brazil Post's Exporta Fácil.

In Ecuador, for example, it is implemented by public and private postal operators offering logistics services for exports. Correos del Ecuador's Exporta Fácil suite of solutions is geared to small and medium-sized enterprises wishing to use a simplified system to export their merchandise through the post. As of 2013, 329 micro, small and medium-sized enterprises and artisans had used the Exporta Fácil to a value of more $2 million.

Source: UPU.

Box VI.4. India's FDI policy related to e-commerce

With some 240 million internet users in 2014, India offers a potentially attractive market for foreign e-commerce companies to invest in. India allows FDI in B2B e-commerce. In 2014, Wal-Mart India launched a B2B platform on which only registered members of certain wholesale stores are eligible to transact online.[a] In July the same year, the Government announced that foreign companies that are manufacturing in India would be allowed to sell their products over e-commerce platforms. By contrast, foreign e-commerce retailers are prohibited from selling to Indian consumers. As a result, players like Amazon and eBay are not allowed to compete with local e-commerce companies such as Flipkart, Snapdeal, Homeshop18 and Indiatimes Shopping. However, foreign companies are allowed to establish e-marketplace platforms that can offer to sell products of third party sellers. For example, Amazon launched a third-party platform in India in June 2014[b] that already has over 1,400 sellers listed on its website.

Source: UNCTAD.

[a] See "Wal-Mart India launches B2B e-commerce platform", *The Hindu*, 1 July, 2014, available at http://www.thehindu.com/business/Industry/walmart-india-launches-b2b-ecommerce-platform/article6167125.ece (accessed 4 February 2015).

[b] See "Amazon engaging with government on relaxing FDI in e-commerce", *Indian Express*, 24 November 2013, available at http://articles.economictimes.indiatimes.com/2013-11-24/news/44412771_1_e-commerce-space-marketplace-model-cent-fdi (accessed 10 February 2015).

Africa. This shows that foreign direct investment (FDI) may provide funding, expertise and know-how that can help the e-commerce sector to expand. At the same time, in some countries there are concerns that opening up to global investors may crowd out local businesses (box VI.4). Thus, both the pros and the cons of FDI in developing the e-commerce industry should be examined.

(d) Strengthening the legal and regulatory framework

Implement and enforce relevant e-commerce laws and regulations: An adequate legal and regulatory framework for e-commerce is of importance for all e-commerce stakeholders to reduce the risk of transacting online and to encourage transparency. Despite progress in the past decade, considerable gaps remain in the cyberlaw coverage in parts of the world. To facilitate cross-border e-commerce, it is important that national legislation in the areas of e-transactions, consumer protection, data protection and privacy is compatible with that of other countries. Aligning such laws with international legal instruments is highly recommended in this context.

Raise the awareness and understanding of e-commerce laws: Once relevant laws and regulations are in place, they need to be communicated transparently to producers and users of e-commerce services. Finally, adopted laws need to be effectively enforced, and consumers as well as enterprises need to know how to seek redress if appropriate. The organization of national public campaigns (including through radio and television programmes) to inform about ways to protect consumers online can be a key element of awareness-raising efforts (chapter V). Moreover, as the area of cyber legislation is still a relatively new territory for the legislature and judiciary in many developing countries, there is a need for further capacity-building.

(e) Skills development

Enhance e-literacy and consumer awareness: Relevant policy measures and initiatives may be needed to foster e-literacy in the population at

large and among consumers. Government and the private sector should work together to address this challenge, from the revision of curricula at different stages in the education system to in-work training and specialized professional skills development. Special programmes may also provide consumers with the relevant knowledge and skills to acquire and use products purchased online, including raising their awareness of their legal rights and obligations (OECD, 2014a).

Build e-commerce skills among small businesses: In many countries there are skill shortages within the ICT sector and elsewhere that affect the capacity of the private sector to take advantage of e-commerce. More sophisticated e-commerce applications require considerable technical skills to handle data mining and analysis methods and systems. The lack of human resources and expertise represents a major barrier to the implementation of e-commerce projects. Data scientists are both in short supply and expensive to employ in developing economies (World Economic Forum, 2012). Micro and small enterprises need training in how to design e-commerce business strategies, evaluate different e-commerce tools and platforms and create compelling advertisements, while paying attention to quality and rapid delivery.[4] In this context it may be useful for Governments at national and local levels to involve intermediaries (such as chambers of commerce and business associations) in the provision of training. They are often in a privileged position to transmit relevant information and knowledge about e-commerce to their members. The Online Shop Association in Suichang County in China (chapter IV) is a good illustration.

Explore the scope for women entrepreneurs to engage in e-commerce: Governments may examine how women entrepreneurs may best tap e-commerce opportunities. B2B solutions may allow growth-oriented women's micro and small enterprises to scale up and connect with international value chains in both goods and services. Women's smaller businesses and micro-entrepreneurs may also gain from B2C and C2C transactions by utilizing e-commerce platforms to reach domestic and foreign markets. Women entrepreneurs, who are often restricted in their access to capital, can benefit from e-commerce and its ability to increase efficiencies and profitability with limited investment (UNCTAD, 2014a).

(f) Promoting government e-procurement

Use e-procurement to incentivize enterprises to use the Internet: Governments can set an example for e-commerce through the use of government e-services and e-payments. By making e-procurement a requirement for public tenders, they provide an incentive for small and medium-sized enterprises to increase their use of the Internet as a business tool. An often-cited example of good practice is ChileCompra (Chile), a public, electronic system for purchasing and hiring based on an Internet platform that caters to companies, public organizations and citizens.[5] Georgia offers another success case. Since the Government created an e-procurement platform in 2011, all tendered government purchases are conducted through a centralized bidding platform operated by the Competition and State Procurement Agency. It has helped to streamline procurement processes, increase competition, enhance transparency and reduce the scope for corruption (Luijken and Martini, 2014).[6] Similarly, in Albania, the introduction of an e-procurement system in 2010 has had positive results in the form of increased competition and considerable cost savings (Luijken and Martini, 2014).

(g) Raising the awareness of all stakeholders

Raise general awareness about e-commerce: A lack of awareness and inertia may hamper the transition from traditional and habitual ways of doing business, thus placing enterprises at a competitive disadvantage. There are various examples of proactive efforts by Governments to inform and educate consumers and businesses, as well as Governments, on the implications of e-commerce. Some Governments have raised the visibility of e-commerce through advertising on billboards, radio, television and the Internet to encourage consumers to buy online. In Uganda, the non-governmental organization, Women of Uganda Network, has undertaken various advocacy and training initiatives aimed at policy intermediaries such as the Government, chambers of commerce, business and trade associations, and professional education institutions that have helped in raising national awareness on ICTs and women's entrepreneurship, including e-commerce.[7]

B. E-COMMERCE POLICIES AT THE INTERNATIONAL LEVEL

Considering the global nature of the Internet, cross-border e-commerce brings about greater need for policy coordination at the regional and multilateral level. A favourable international environment for e-commerce involves trade rules that are simple, consistent, transparent, non-discriminatory and enforceable. In view of national differences and the diversity among countries, ensuring compatibility among various national regulatory frameworks for e-commerce is essential but also a major challenge (chapter V).

With the expansion of e-commerce, new barriers to international trade are emerging. National legal barriers such as stringent financial licensing agreements and restrictions on the ability of foreign e-commerce companies to enter and engage in local e-commerce markets have been noted (Sweden, National Board of Trade, 2012). Some measures may aim at protecting local businesses from foreign competitors. For example, Chinese financial payment licensing agreements may have prevented eBay from offering Chinese consumers equivalent e-payment features to those provided through Alipay on the Taobao platform. This reportedly contributed to eBay's exit from the market in 2006.[8] In India, foreign e-commerce companies are prohibited from selling their own products (box VI.4). In addition, some Governments and other cloud service customers have enacted data localization laws reflecting concerns about data being kept on servers in other jurisdictions (Kshetri, 2010; UNCTAD, 2013b).

International dialogue and cooperation is crucial to promote the smooth exchange of e-commerce while at the same time spreading benefits of e-commerce more widely. In the following sections, special attention is given to international trade rules, taxation challenges, and the role of development partners in support of capacity-building. Rather than an exhaustive treatment of the relevant issues, the discussion mainly serves to highlight some important areas in need of more attention.

1. E-commerce and international trade rules

One effect of e-commerce is an expansion of international trade. This is likely to be the most pronounced in the case of products that can be delivered remotely, such as various professional and business processing services, music, e-books and movie downloads, software and other digital products. But the use of e-commerce platforms has also been found to bring down costs for trade in goods (Lendle et al., 2012), and as noted in chapter II, international shipments of parcels and small packets has expanded in recent years as a result of e-commerce. Cross-border e-commerce simultaneously affects, and is affected by, international trade rules at multilateral and bilateral levels.

The WTO is the principal multilateral institution governing international trade. E-commerce touches upon several WTO agreements. Consequently, pursuant to the ministerial decision that launched the WTO work programme on e-commerce in 1998,[9] the General Council designated issues to be examined by the WTO councils concerned with trade in goods, services and intellectual property rights, as well as the Committee on Trade and Development.[10]

The Bali Ministerial Decision in 2013 on e-commerce renewed the moratorium on customs duties on electronic transmissions, initiated in 1998, and urged that discussions should focus on a range of issues, including the "trade-related aspects of, inter alia, enhancing Internet connectivity and access to information and telecommunications technologies and public Internet sites, the growth of mobile telephony, electronically delivered software, cloud computing, the protection of confidential data, privacy and consumer protection".[11] Although no formal conclusions have yet been issued by the bodies conducting the work programme, an emerging consensus was that the provisions of their respective agreements appear to be technology neutral, hence apply to trade in all its forms, including trade via the Internet.

Even beyond the remit of the work programme per se, e-commerce and other forms of ICT-enabled trade have proved relevant to the ongoing WTO work on services classification of the Committee on Specific Commitments, a sub-body of the Council for Trade in Services, as well as to work carried out under the Agreement on Technical Barriers to Trade, the Information Technology Agreement, and discussions on trade facilitation (see below). In addition, online trade has been subject to negotiations under the auspices of the current trade round, the Doha Development Agenda.

However, in light of the slow progress at the multilateral level, some countries have included chapters or other provisions on e-commerce in various bilateral and regional free trade agreements.[12] Such agreements address to varying degrees issues of relevance to e-commerce, including definitions, customs duties, transparency, non-discrimination and regulatory issues, electronic authentication, consumer protection and cooperation. For example, all free trade agreements to which the United States or the European Union are party now include e-commerce chapters. The e-commerce dimension is also under discussion in the ongoing negotiations related to the Trade in Services Agreement, the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.

During the 2013 WTO Bali Ministerial, some nine years of negotiation reached consensus on the so-called Trade Facilitation Agreement (TFA).[13] The agreement contains provisions for expediting the movement, release and clearance of goods. It also sets out measures for effective cooperation between customs and other authorities as well as cross-border cooperation by border authorities. It contains provisions for technical assistance and capacity-building and special and differential treatment provisions that allow developing countries, including LDCs, to determine when they will implement specific aspects of the agreement. It allows them to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity-building.

Technical assistance for trade facilitation is provided by the WTO. WTO members and other intergovernmental organizations, including the World Bank, the World Customs Organization (WCO) and UNCTAD. UPU and WCO are working together on improving merchandise flows resulting from e-commerce, and this is expected to increase as a result of the WTO TFA.[14] UNCTAD is supporting national policymakers and the international community as a whole in the area of trade facilitation.[15]

The implementation of the TFA would encourage countries to cut red tape and make customs procedures more efficient, thereby enabling them to integrate into global value chains, including by leveraging e-commerce. Several of the measures included have a direct bearing on e-commerce, be it through improved transparency, faster customs clearance, or the facilitation of express shipments.[16]

2. Taxation concerns related to e-commerce

Taxation has emerged as a particularly relevant issue due to the large revenues being generated through e-commerce. Increased reliance on e-commerce has numerous potential implications. E-commerce weakens the international tax concept that allocates jurisdictional tax claims over profits of multinational companies based on physical presence. It raises issues such as where to tax non-resident e-commerce businesses, how to assess intragroup transactions, how to classify digital goods, how to identify tax payers, and where and how to collect consumption tax, as well as issues of enforcement.

The treaty concept of permanent establishment is said to impact negatively on developing countries as it precludes countries from taxing profits derived from business activities within their jurisdictions, unless these activities can be connected to a physical establishment (Forgione, 2003). Thus, developing countries in which foreign e-commerce businesses are in the majority may be unable to collect tax revenue where the businesses have no physical presence within their jurisdictions.

Among developed countries, particular concerns have been expressed that e-commerce may exacerbate the risk of tax base erosion in individual economies. In 2013, an OECD Task Force on the Digital Economy noted that (OECD, 2014b: 14):

> the ability to centralize infrastructure at a distance from a market jurisdiction and conduct substantial sales of goods and services into that market from a remote location, combined with increasing ability to conduct substantial activity with minimal use of personnel, generates potential opportunities to achieve [base erosion and profit shifting] by fragmenting physical operations to avoid taxation.

In the United Kingdom, for example, Amazon participated in a 2012 hearing organized by the Parliamentary Public Accounts Committee. Whereas Amazon had reported turnover of £207 million ($335 million) for 2011 for its company in the United Kingdom, it had shown a tax expense of only £1.8 million ($2.9 million). Moreover, the European-wide turnover of Amazon EU Sarl, which amounted to €9.1 billion ($11.6 billion), had resulted

in taxes of only €8.2 million ($10.4 million). Amazon had also explained that for 2011, sales from the United Kingdom accounted for 25 per cent of all international sales outside the United States. Despite having over 15,000 staff and physical inventory in the United Kingdom, the company paid little corporate tax in that country.[17]

Remote supplies of digital products to consumers without any direct or indirect physical presence of the supplier in the consumer's jurisdiction furthermore present challenges to value added tax (VAT) systems, as they may often result in no or an inappropriately low amount of VAT being collected. This can create potential competitive pressures on domestic suppliers. The OECD Task Force identified the collection of VAT related to B2C transactions as a pressing issue that needed to be addressed to create a level playing field between foreign and domestic suppliers (OECD, 2014b).

Whereas concerns related to tax implications from e-commerce are likely to be more pronounced in countries where the uptake of e-commerce is relatively high, finding ways to address related concerns are of relevance to all countries.

3. Support by development partners

As noted above, there is a need for capacity-building and technical support if more countries are to benefit from e-commerce. Assistance from the international community can help in several ways. Support may include the provision of training, policy advice, strategy formulation and other forms of assistance. At a country level, specific support from development partners may address areas such as e-commerce readiness assessments, financing of infrastructure investment, support to the development of legal and regulatory frameworks, and the building of capacity among different stakeholders.

A number of existing initiatives have been implemented through various international organizations such as the Commonwealth secretariat, ITC, OECD, UPU, WCO, the World Bank, the European Union, the Council of Europe and others. UNCTAD's assistance and technical advice in the area of e-commerce come in three main forms: support with law reforms related to e-commerce; statistical capacity-building; and national ICT policy reviews and training (box VI.5).

Box VI.5. UNCTAD support to e-commerce development in developing countries

The UNCTAD ICT and law reform programme assists countries in the development of e-commerce legislation. Relevant laws should ensure trust in online transactions, ease the conduct of domestic and international trade online, and offer legal protection for users and providers of e-commerce and e-government services. Since 2000, the programme has supported over 60 developing countries in Africa, Asia and Latin America, at both regional and national levels. Assistance includes reviews of draft or existing legislation; drafting of legislation harmonized with regional and international legal frameworks; organization of national stakeholders' consultations; organization of training workshops and the briefing of parliamentarians.

A second area in which UNCTAD assists countries concerns the production of statistics on the information economy to support evidence-based policymaking. Assistance is offered through regional training courses, national workshops and other advisory services. Core indicators on ICT use by enterprises, including e-commerce, on the value added and workforce of the ICT sector, and on international trade in ICT goods, are collected by UNCTAD annually. Ongoing development of methodological reference materials, and of new or improved indicators, is achieved in collaboration with the Partnership on Measuring ICT for Development to ensure international comparability and effective use of available expertise and resources.

UNCTAD can undertake national ICT policy reviews upon request. Such reviews seek to assist countries in building and maintaining a dynamic and responsive ICT policy environment. They aim to ensure that national ICT programmes become an instrument for supporting national development, helping local industry compete in a knowledge-based, global economy and promoting economic growth and exports. The focus of the reviews is determined in a dialogue with the requesting country. For example, the Government of Egypt in 2014 requested UNCTAD to assist in its development of a national e-commerce strategy, establishing short-, medium- and long-term targets and policy recommendations for implementation.

UNCTAD also offers a training course entitled E-commerce for Practitioners. This is designed to help identify challenges of e-commerce, maximize its positive impact on businesses and foster dynamic and reliable e-commerce solutions in developing countries. The course equips participants to engage in structural reforms promoting e-commerce or setting up new businesses.

Source: UNCTAD.

C. CONCLUDING REMARKS

The global landscape for e-commerce is evolving rapidly. With the changing ICT landscape, the past decade has seen e-commerce transform how business is conducted. Enterprises of all sizes and across industries in developing countries are increasingly compelled to learn how to benefit from e-commerce in order to stay competitive. As in other areas of the world economy, developing countries are assuming a greater role. Thanks to new technology, improved connectivity and innovative business models, e-commerce is becoming relevant also in low-income countries. Indeed, some of the most dynamic developments are witnessed in parts of sub-Saharan Africa and Asia.

Nonetheless, there is scope for making the e-commerce phenomenon more inclusive and beneficial. As shown in this report, the extent to which enterprises are using ICTs to buy and sell goods and services varies greatly, indicating that the potential is far from fully exploited. Much remains to be done to bridge the remaining gaps in access to the Internet and to make such access more affordable. Similarly, the availability of e-commerce platforms and payment solutions leveraging technology can be further improved in many developing countries in ways that correspond to their specific needs and capabilities. Efforts in those areas should be complemented with improvements in the legal framework at national and international levels to foster trust in online commerce.

It is well worth pursuing such efforts. There are significant benefits to be achieved for consumers, enterprises and Governments from a higher reliance on e-commerce. New evidence presented in this report points, for example, to significant productivity gains from selling on the Internet and that such effects are particularly important for smaller enterprises and in services industries. Enhancing the ability of micro and small enterprises to explore e-commerce options, to tap the emerging opportunities in online retail and to integrate better in global supply chains would help to unleash their potential and spur economic growth in developing countries.

But everyone will not benefit automatically from e-commerce. A shift from offline to online commerce changes the ways in which consumers and enterprises interact. Some companies are better equipped to adapt to such transformations. Thus, there is a need for more research on the broader implications of e-commerce.

A first area to examine concerns the distributional effects of e-commerce. How are the gains achieved from online transactions shared between large and small enterprises, between global and local businesses, between different segments of the private sector, and the like. As noted in chapter II, there is a relatively high level of market concentration among web retailers, possibly suggesting that economies of scale and scope may favour larger enterprises over smaller ones.

A second area concerns the impact on employment. To what extent is e-commerce leading to a net creation or loss of jobs? How is the quality and remuneration of different jobs affected when more activities are transacted online? There is to date little knowledge about such questions.

A third area that may need to be further examined relates to the retail industry. What is the impact of a transition from high-street retail to online retail on urban centres and rural areas. Whereas there has been a clear trend towards more bricks-and-mortar companies introducing online and mobile sales channels to meet competition from pure-play web retailers, there has recently been cases of e-commerce companies establishing a physical presence. For example, in March 2014, the Alibaba Group announced that it was forming a joint venture with Intime Retail, a company that owns department stores and commercial real estate assets in mainland China.

The e-commerce landscape will continue to evolve in various directions, and Governments will face a continuous challenge in keeping up to speed with these developments. From a policy perspective, it is important to try to create an environment that provides as equal opportunities as possible for stakeholders in different locations and areas of society to take part in the process. In this context, international cooperation and effective dialogue between policymakers and other stakeholders will remain instrumental.

NOTES

1 See http://www.botspost.co.bw/doc/botswana_post_newsletter09_edited.pdf (accessed 4 February 2015).

2 See http://www.upu.int/en/activities/addressing/about-addressing.html (accessed 4 February 2015).

3 For more information; see http://www.asycuda.org/ (accessed 4 February 2015).

4 A study of e-commerce use among microenterprises in rural Mexico found that e-commerce could not be a realistic option to support artisans without significant training in basic ICT skills needed to expedite general business tasks (Rehbein, 2013).

5 See http://www.chilecompra.cl/ (accessed 4 February 2015).

6 See also "OpenGov Voices: How Georgia is handling procurement transparency", Sunlightfoundation.com, 16 January 2014; available at http://sunlightfoundation.com/blog/2014/01/16/opengov-voices-how-georgia-is-handling-procurement-transparency/ (accessed 13 February 2015).

7 See http://kic.wougnet.org/new/ (accessed 6 February 2015).

8 See "EBay is expected to close its auction site in China", *The New York Times*, 19 December 2006; available at http://www.nytimes.com/2006/12/19/technology/19ebay.html?fta=y&_r=0 (accessed 4 February 2015).

9 WT/MIN(98)/DEC/2.

10 WT/L/274.

11 WT/L/907; available at http://wto.org/english/thewto_e/minist_e/mc9_e/desci32_e.htm (accessed 4 February 2015).

12 Copies of all regional trade agreements in force and notified to the WTO can be consulted in the WTO database at http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx (accessed 4 February 2015).

13 For the agreed text; see http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm (accessed 4 February 2015).

14 See, for example, the speech by the Secretary General of WCO; available at http://news.upu.int/multimedia/audio/world-customs-organization-chief-on-e-commerce-boom/ (accessed 4 February 2015).

15 See http://unctad.org/en/PublicationsLibrary/dtlstict2014d1_en.pdf (accessed 4 February 2015)

16 Expressed shipments are specifically covered by article 7.8 on expedited shipments.

17 See minutes from the Committee; available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/71605.htm (accessed 4 February 2015).

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STATISTICAL ANNEX

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Annex 1. UNCTAD B2C E-commerce Index, 2014

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD E-commerce Index value	Rank
Luxembourg	100	72.4	95.0	99.3	91.7	[illegible]
Norway	100	60.0	96.0	97.4	88.3	[illegible]
Finland	100	63.9	92.0	96.5	88.1	[illegible]
Canada	100	72.3	83.0	93.3	87.1	[illegible]
Sweden	100	53.5	95.0	95.9	86.0	[illegible]
Australia	100	64.2	83.0	94.8	85.5	[illegible]
Denmark	100	44.9	95.0	99.0	84.7	[illegible]
Republic of Korea	100	56.4	82.1	98.6	84.3	[illegible]
United Kingdom	100	51.6	91.0	94.4	84.2	[illegible]
Israel	100	79.7	73.4	82.4	83.9	[illegible]
Netherlands	100	41.4	94.0	100.0	83.8	[illegible]
Japan	100	64.4	79.5	90.5	83.6	[illegible]
New Zealand	97	59.2	83.0	93.8	83.3	[illegible]
Switzerland	99	56.0	78.0	99.4	83.1	[illegible]
United States	93	61.9	78.0	95.1	82.0	[illegible]
Belgium	100	54.3	83.0	90.5	82.0	[illegible]
Ireland	100	55.6	80.0	90.3	81.5	[illegible]
Hong Kong (China)	100	58.1	74.2	89.2	80.4	[illegible]
Malta	100	52.9	70.0	96.1	79.8	[illegible]
Germany	100	35.7	86.0	93.5	79.8	[illegible]
Austria	99	38.9	82.0	93.6	79.4	[illegible]
France	100	37.5	84.0	87.2	77.2	[illegible]
Slovenia	100	38.6	74.0	88.1	75.2	[illegible]
Estonia	97	30.2	82.0	90.7	75.0	[illegible]
Cyprus	98	45.9	66.0	89.1	74.8	[illegible]
Singapore	100	37.3	72.0	89.0	74.6	[illegible]
Spain	99	41.9	74.0	82.4	74.3	[illegible]
Czech Republic	100	26.5	76.0	88.4	72.7	[illegible]
Slovakia	99	20.3	81.0	82.2	70.6	[illegible]
Latvia	100	19.9	76.0	82.5	69.6	[illegible]
Portugal	100	29.6	65.0	80.7	68.8	[illegible]
Italy	100	30.5	61.0	80.1	67.9	[illegible]
Hungary	100	15.0	74.0	81.8	67.7	[illegible]
Bahrain	100	19.3	73.0	77.2	67.4	[illegible]
Poland	100	17.7	65.0	83.5	66.5	[illegible]
Lithuania	100	13.4	69.0	82.0	66.1	[illegible]

Annex 1. UNCTAD B2C E-commerce Index, 2014 *(continued)*

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD E-commerce Index value	Rank
Croatia	79	34.8	68.0	79.7	65.4	[illegible]
Turkey	97	45.1	46.0	68.9	64.2	[illegible]
Chile	94	22.8	61.4	73.9	63.0	[illegible]
Uruguay	93	27.1	58.0	72.1	62.5	[illegible]
The former Yugoslav Republic of Macedonia	100	16.5	63.2	69.1	62.2	[illegible]
Greece	93	17.5	61.0	76.9	62.1	[illegible]
Trinidad and Tobago	93	15.3	59.5	73.8	60.4	[illegible]
Serbia	99	22.6	53.5	65.9	60.1	[illegible]
Malaysia	93	11.9	63.6	71.1	59.9	[illegible]
Romania	100	11.7	55.0	71.4	59.5	[illegible]
Brazil	81	29.2	58.0	69.9	59.5	[illegible]
Argentina	93	21.9	54.1	67.6	59.1	[illegible]
Bulgaria	90	10.4	56.0	77.4	58.5	[illegible]
Russian Federation	100	9.7	53.3	69.0	58.0	[illegible]
Lebanon	100	11.4	52.0	67.6	57.7	[illegible]
Costa Rica	98	12.2	47.5	72.5	57.6	[illegible]
Bosnia and Herzegovina	90	11.7	65.4	62.9	57.5	[illegible]
Mauritius	100	14.1	37.6	76.3	57.0	[illegible]
Albania	100	10.6	54.7	60.7	55.4	[illegible]
Georgia	98	8.8	49.0	64.3	55.0	[illegible]
Dominican Republic	99	12.2	45.0	61.5	54.5	[illegible]
Ukraine	98	19.3	33.7	63.7	53.7	[illegible]
Armenia	90	2.3	53.0	67.1	53.1	[illegible]
Mexico	91	13.0	43.5	63.7	52.8	[illegible]
Belarus	100	7.8	39.6	63.5	52.7	[illegible]
Moldova	98	2.4	43.4	63.1	51.7	[illegible]
Bolivarian Republic of Venezuela	93	10.4	44.1	56.6	51.0	[illegible]
Kazakhstan	86	8.6	53.3	55.3	50.8	[illegible]
China	100	8.2	44.1	48.1	50.1	[illegible]
United Arab Emirates	0	30.0	85.0	79.8	48.7	[illegible]
South Africa	81	7.8	32.0	73.2	48.5	[illegible]
Egypt	99	1.4	44.1	47.2	47.9	[illegible]
Islamic Republic of Iran	100	23.9	26.0	39.1	47.3	[illegible]
Thailand	95	4.5	28.9	60.6	47.2	[illegible]

Annex 1. UNCTAD B2C E-commerce Index, 2014 *(continued)*

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD E-commerce Index value	Rank
Colombia	60	10.2	51.7	65.6	46.9	[illegible]
El Salvador	95	5.3	25.5	60.9	46.7	[illegible]
Qatar	0	32.3	69.3	78.3	45.0	[illegible]
Tunisia	93	4.3	21.0	60.1	44.6	[illegible]
Morocco	72	4.5	53.0	47.6	44.3	[illegible]
Ecuador	68	10.2	35.1	63.0	44.1	[illegible]
Guatemala	95	6.9	16.0	58.1	44.0	[illegible]
Uzbekistan	100	3.4	36.5	35.3	43.8	[illegible]
Sri Lanka	98	3.5	18.3	54.9	43.7	[illegible]
Jamaica	50	6.9	46.5	67.9	42.8	[illegible]
Oman	5	26.6	67.0	70.6	42.3	[illegible]
Peru	56	10.0	38.2	61.9	41.5	[illegible]
India	100	1.8	12.6	48.2	40.6	[illegible]
Panama	25	10.7	45.2	73.5	39.6	[illegible]
Honduras	75	5.3	18.1	55.1	39.4	[illegible]
Pakistan	95	0.7	10.0	39.2	39.2	[illegible]
Syrian Arab Republic	85	2.8	24.3	30.6	35.7	[illegible]
Indonesia	75	0.5	15.4	48.6	34.9	[illegible]
Sierra Leone	95	2.2	1.3	35.6	33.5	[illegible]
Viet Nam	30	1.2	39.5	54.2	31.2	[illegible]
Tajikistan	70	1.2	14.5	38.8	31.1	[illegible]
Cambodia	75	0.1	4.9	43.0	30.8	[illegible]
Zambia	60	3.7	13.5	45.4	30.6	[illegible]
Nepal	65	0.6	11.2	44.2	30.2	[illegible]
Jordan	10	3.5	41.0	63.8	29.6	[illegible]
Madagascar	80	0.0	2.1	33.7	28.9	[illegible]
Zimbabwe	45	6.5	17.1	46.5	28.8	[illegible]
Nicaragua	44	2.5	13.5	54.4	28.6	[illegible]
Plurinational State of Bolivia	19	4.1	34.2	54.9	28.1	[illegible]
Mali	70	0.6	2.2	37.6	27.6	[illegible]
Nigeria	35	0.8	32.9	41.4	27.5	[illegible]
Afghanistan	65	0.8	5.5	37.0	27.1	[illegible]
Mongolia	20	1.9	16.4	62.2	25.1	[illegible]
Iraq	65	1.7	7.1	26.6	25.1	[illegible]
Angola	15	15.5	16.9	48.1	23.9	[illegible]

Annex 1. UNCTAD B2C E-commerce Index, 2014 *(continued)*

Economy	Share of population having mail delivered at home (2012 or latest, per cent)	Share of individuals with credit card (15+, 2011, per cent)	Share of individuals using Internet (2013 or latest, per cent)	Secure servers per 1 million people (normalized, 2013)	UNCTAD E-commerce Index value	Rank
Lao People's Democratic Republic	39	3.1	10.8	37.4	22.6	[illegible]
Haiti	40	1.8	9.8	37.7	22.3	[illegible]
Swaziland	0	13.3	20.8	54.8	22.2	[illegible]
Ghana	20	2.2	17.1	45.0	[illegible]	[illegible]
Mozambique	35	3.5	4.9	40.9	21.1	[illegible]
Botswana	0	10.7	11.5	56.1	[illegible]	[illegible]
Senegal	5	0.8	19.2	43.5	17.1	[illegible]
Gabon	0	2.7	8.6	55.4	[illegible]	[illegible]
Kenya	0	6.1	6.3	49.8	15.6	[illegible]
Rwanda	0	2.8	8.0	44.8	13.9	[illegible]
Uganda	0	1.6	14.7	38.5	13.7	[illegible]
Comoros	5	1.5	6.0	39.7	13.0	[illegible]
Togo	0	1.0	4.0	46.3	12.9	[illegible]
Benin	8	0.5	3.8	37.7	12.5	[illegible]
Liberia	5	2.7	3.8	36.6	12.0	[illegible]
Sudan	15	0.6	21.0	[illegible]	[illegible]	[illegible]
United Republic of Tanzania	0	3.7	4.0	37.8	11.4	[illegible]
Malawi	1	1.4	4.4	36.5	10.8	[illegible]
Lesotho	2	2.5	4.6	31.3	10.1	[illegible]
Burkina Faso	0	0.8	3.7	35.7	[illegible]	[illegible]
Democratic Republic of the Congo	0	1.6	1.7	28.5	8.0	[illegible]
Burundi	2	0.6	1.2	27.5	[illegible]	[illegible]
Niger	5	0.4	1.4	22.9	7.4	[illegible]
Central African Republic	0	0.6	3.0	25.0	[illegible]	[illegible]
Guinea	5	1.3	1.5	17.7	6.4	[illegible]

Source: UNCTAD, based on data from ITU, UPU and the World Bank.

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Annex 2. Amazon, eBay and PayPal services availability in United Nations Member States, 2014

United Nations Member State	Amazon services: Sellers supported to ship by Amazon	Amazon services: Countries and currencies supported by Amazon	Amazon services: Bank accounts supported by Amazon	eBay services: United States site	eBay services: eBay international site	eBay services: eBay local (buy-only) site	PayPal services: Personal account	PayPal services: Premier account	PayPal services: Business account
Afghanistan						X			
Albania						X	X	X	X
Algeria						X	X	X	X
Andorra						X	X	X	X
Angola						X	X		
Antigua and Barbuda						X	X	X	
Argentina	X					X	X	X	
Armenia						X	X		
Australia		X	X		X		X	X	X
Austria	X	X	X		X		X	X	X
Azerbaijan						X	X		
Bahamas						X	X	X	
Bahrain						X	X	X	X
Bangladesh						X			
Barbados						X	X	X	
Belarus						X	X		
Belgium	X	X	X		X		X	X	X
Belize						X	X	X	
Benin						X	X		
Bhutan						X	X		
Bolivia (Plurinational State of)						X	X		
Bosnia and Herzegovina						X	X	X	X
Botswana						X	X	X	X
Brazil	X					X	X	X	
Brunei Darussalam						X	X		
Bulgaria	X					X	X	X	X
Burkina Faso						X	X		
Burundi						X	X		
Cambodia						X	X		
Cameroon						X	X		
Canada		X	X		X		X	X	X
Cape Verde						X	X		
Central African Republic						X			
Chad						X	X		
Chile						X	X	X	
China	X				X	X	X	X	X
Colombia						X	X	X	
Comoros						X	X		
Congo						X	X		
Costa Rica	X					X	X*		
Côte d'Ivoire						X	X		

Annex 2. Amazon, eBay and PayPal services availability in United Nations Member States, 2014 *(continued)*

United Nations Member State	Amazon services			eBay services			PayPal services		
	Sellers supported to ship by Amazon	Countries and currencies supported by Amazon	Bank accounts supported by Amazon	United States site	eBay international site	eBay local (buy-only) site	Personal account	Premier account	Business account
Croatia	X					X	X	X	X
Cuba						X			
Cyprus	X	X	X			X	X	X	X
Czech Republic	X					X	X	X	X
Democratic Peoples Republic of Korea						X			
Democratic Republic of the Congo						X	X		
Denmark	X					X	X	X	X
Djibouti						X	X		
Dominica						X	X		
Dominican Republic						X	X	X	
Ecuador						X	X		
Egypt						X	X		
El Salvador						X	X		
Equatorial Guinea						X			
Eritrea						X	X		
Estonia	X	X	X			X	X	X	X
Ethiopia						X	X		
Fiji						X	X	X	X
Finland	X	X	X			X	X	X	X
France	X	X	X		X		X	X	X
Gabon						X	X		
Gambia						X	X		
Georgia						X	X		
Germany	X	X	X		X		X	X	X
Ghana						X			
Greece	X	X	X			X	X	X	X
Grenada						X	X	X	
Guatemala						X	X		
Guinea						X	X		
Guinea-Bissau						X	X		
Guyana						X	X*		
Haiti						X			
Honduras						X	X		
Hungary	X					X	X	X	X
Iceland	X					X	X	X	X
India	X	X	X		X		X	X	X
Indonesia						X	X	X	X
Iran (Islamic Republic of)						X			
Iraq						X			

Annex 2. Amazon, eBay and PayPal services availability in United Nations Member States, 2014 *(continued)*

United Nations Member State	Amazon services			eBay services			PayPal services		
	Sellers supported to ship by Amazon	Countries and currencies supported by Amazon	Bank accounts supported by Amazon	United States site	eBay international site	eBay local (buy-only) site	Personal account	Premier account	Business account
Ireland	X	X	X		X		X	X	X
Israel	X					X	X	X	X
Italy	X	X	X		X		X	X	X
Jamaica						X	X	X	
Japan	X					X	X	X	X
Jordan						X	X	X	X
Kazakhstan						X	X		
Kenya						X	X	X	X
Kiribati						X	X		
Kuwait						X	X	X	X
Kyrgyzstan						X	X		
Lao People's Democratic Republic						X	X		
Latvia	X					X	X	X	X
Lebanon						X			
Lesotho						X	X	X	X
Liberia						X			
Libya						X			
Liechtenstein	X					X	X	X	X
Lithuania	X					X	X	X	X
Luxembourg	X	X	X			X	X	X	X
Madagascar						X	X		
Malawi						X	X	X	X
Malaysia					X		X	X	X
Maldives						X	X		
Mali						X	X		
Malta		X	X			X	X	X	X
Marshall Islands	X					X	X		
Mauritania						X	X		
Mauritius						X	X		
Mexico	X					X	X	X	X
Micronesia (Federated States of)	X					X	X		
Monaco						X	X		
Mongolia						X	X		
Montenegro						X	X		
Morocco						X	X	X	X
Mozambique						X	X	X	X
Myanmar						X			
Namibia						X	X		
Nauru						X	X		

Annex 2. Amazon, eBay and PayPal services availability in United Nations Member States, 2014 *(continued)*

United Nations Member State	Amazon services			eBay services			PayPal services		
	Sellers supported to ship by Amazon	Countries and currencies supported by Amazon	Bank accounts supported by Amazon	United States site	eBay international site	eBay local (buy-only) site	Personal account	Premier account	Business account
Nepal						X	X		
Netherlands	X	X	X		X		X	X	X
New Zealand	X	X	X			X	X	X	X
Nicaragua						X	X		
Niger						X	X		
Nigeria	X					X	X		
Norway	X					X	X	X	X
Oman						X	X	X	X
Pakistan						X			
Palau	X					X	X	X	X
Panama						X	X		
Papua New Guinea						X	X		
Paraguay						X	X*		
Peru						X	X	X	
Philippines					X		X	X	X
Poland	X				X		X	X	X
Portugal	X	X	X			X	X	X	X
Qatar						X	X	X	X
Republic of Korea	X				X	X	X	X	X
Republic of Moldova						X	X		
Romania						X	X	X	X
Russian Federation	X					X	X	X	X
Rwanda						X	X		
Saint Kitts and Nevis						X	X	X	
Saint Lucia						X	X	X	
Saint Vincent and the Grenadines						X	X		
Samoa						X	X		
San Marino	X					X	X	X	X
Sao Tome and Principe							X		
Saudi Arabia						X	X	X	X
Senegal						X	X		
Serbia						X	X		
Seychelles						X	X	X	X
Sierra Leone						X	X		
Singapore	X				X		X	X	X
Slovakia	X	X	X			X	X	X	X
Slovenia	X	X	X			X	X	X	X
Solomon Islands						X	X		
Somalia						X	X		
South Africa	X					X	X	X	X

Annex 2. Amazon, eBay and PayPal services availability in United Nations Member States, 2014 (*continued*)

United Nations Member State	Amazon services			eBay services			PayPal services		
	Sellers supported to ship by Amazon	Countries and currencies supported by Amazon	Bank accounts supported by Amazon	United States site	eBay international site	eBay local (buy-only) site	Personal account	Premier account	Business account
South Sudan									
Spain	X	X	X		X		X	X	X
Sri Lanka						X	X		
Sudan						X			
Suriname						X	X*		
Swaziland						X	X		
Sweden	X				X	X	X	X	X
Switzerland	X				X		X	X	X
Syrian Arab Republic						X			
Tajikistan						X	X		
Thailand					X	X	X	X	X
The former Yugoslav Republic of Macedonia						X	X		
Timor-Leste									
Togo						X	X		
Tonga						X	X		
Trinidad and Tobago						X	X	X	
Tunisia						X	X		
Turkey	X				X	X	X	X	X
Turkmenistan						X	X		
Tuvalu						X	X		
Uganda						X	X		
Ukraine						X	X		
United Arab Emirates						X	X	X	X
United Kingdom	X	X	X		X		X	X	X
United Republic of Tanzania						X	X		
United States	X	X	X	X			X	X	X
Uruguay						X	X	X	
Uzbekistan						X			
Vanuatu						X	X	X	X
Venezuela (Bolivarian Republic of)						X	X	X	
Viet Nam					X	X	X	X	X
Yemen						X	X		
Zambia						X	X		
Zimbabwe						X	X		

Source: UNCTAD analysis of information from Amazon.com, 15 August 2014, see http://www.amazon.com/gp/help/customer/display.html?nodeId=201118550; http://www.amazon.com/gp/help/customer/display.html?nodeId=200419782C; http://www.amazon.com/gp/help/customer/display.html?nodeId=201074230; from ebay.com and ebay.co.uk, 15 August 2014, see http://sellercentre.ebay.co.uk/where-to-sell-internationally?cat=1015; and from PayPal, see https://www.paypal.com/webapps/mpp/country-worldwide.

* Personal accounts allow only sending money and buying online, but not receiving money and selling online.

Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
Developed economies								
Andorra	[illegible]		no data	no data	[illegible]		no data	no data
Australia	[illegible]		Yes		[illegible]		Yes	
Austria	[illegible]		Yes		[illegible]		Yes	
Belgium	[illegible]		Yes		[illegible]		Yes	
Bulgaria	[illegible]		Yes		[illegible]		Yes	
Canada	[illegible]		Yes		[illegible]		Yes	
Croatia	[illegible]		Yes		[illegible]		Yes	
Cyprus	[illegible]		Yes		[illegible]		Yes	
Czech Republic	[illegible]		Yes		[illegible]		No	Yes
Denmark	[illegible]		Yes		[illegible]		Yes	
Estonia	[illegible]		Yes		[illegible]		Yes	
Finland	[illegible]		Yes		[illegible]		Yes	
France	[illegible]		Yes		[illegible]		Yes	
Germany	[illegible]		Yes		[illegible]		Yes	
Greece	[illegible]		Yes		[illegible]		Yes	
Hungary	[illegible]		Yes		[illegible]		Yes	
Iceland	[illegible]		no data	no data	[illegible]		no data	no data
Ireland	[illegible]		Yes		[illegible]		Yes	
Israel	[illegible]		Yes		[illegible]		Yes	
Italy	[illegible]		Yes		[illegible]		Yes	
Japan	[illegible]		no data	no data	[illegible]		Yes	
Latvia	[illegible]		Yes		[illegible]		Yes	
Liechtenstein	[illegible]		no data	no data	[illegible]		Yes	
Lithuania	[illegible]		Yes		[illegible]		Yes	
Luxembourg	[illegible]		Yes		[illegible]		Yes	
Malta	[illegible]		Yes		[illegible]		Yes	
Monaco	[illegible]		no data	no data	[illegible]		no data	no data
Netherlands	[illegible]		Yes		[illegible]		Yes	
New Zealand	[illegible]		Yes		[illegible]		Yes	
Norway	[illegible]		Yes		[illegible]		Yes	
Poland	[illegible]		Yes		[illegible]		Yes	
Portugal	[illegible]		Yes		[illegible]		Yes	
Romania	[illegible]		Yes		[illegible]		Yes	
San Marino	[illegible]		Yes		[illegible]		no data	no data
Slovakia	[illegible]		Yes		[illegible]		Yes	
Slovenia	[illegible]		Yes		[illegible]		No	No
Spain	[illegible]		Yes		[illegible]		Yes	
Sweden	[illegible]		Yes		[illegible]		Yes	
Switzerland	[illegible]		Yes		[illegible]		Yes	
United Kingdom	[illegible]		Yes		[illegible]		Yes	
United States	[illegible]		Yes		[illegible]		Yes	
Holy See	no data	no data	no data	no data	[illegible]		no data	no data

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Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws *(continued)*

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
Developing economies								
Africa								
Eastern Africa								
Burundi	No	Yes	No	Yes	[illegible]	[illegible]	No	Yes
Comoros	No	No	no data	no data	[illegible]	[illegible]	No	No
Djibouti	no data	no data	no data	no data	[illegible]	[illegible]	Yes	
Eritrea	No	[illegible]	No	No	[illegible]	[illegible]	no data	no data
Ethiopia	No	Yes	No	No	[illegible]	[illegible]	No	Yes
Kenya	Yes		Yes		[illegible]	[illegible]	Yes	
Madagascar	[illegible]	[illegible]	no data	no data	[illegible]		Yes	
Malawi	No	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Mauritius	Yes		no data	no data	[illegible]	[illegible]	Yes	
Mozambique	No	Yes	no data	no data	[illegible]	[illegible]	No	Yes
Rwanda	Yes		Yes		[illegible]	[illegible]	Yes	
Seychelles	Yes		no data	no data	[illegible]		Yes	
Somalia	no data	no data	no data	no data	[illegible]	[illegible]	No	No
South Sudan	no data	no data	no data	no data	[illegible]	[illegible]	no data	no data
Uganda	Yes		Yes		[illegible]	[illegible]	Yes	
United Republic of Tanzania	No	Yes	No	Yes	[illegible]	[illegible]	No	Yes
Zambia	Yes		Yes		[illegible]		Yes	
Zimbabwe	No	[illegible]	no data	no data	[illegible]		Yes	no data
Middle Africa								
Angola	no data	no data	No	No	[illegible]		No	Yes
Cameroon	Yes		Yes		[illegible]	[illegible]	Yes	
Central African Republic	no data	no data	no data	no data	[illegible]	[illegible]	no data	no data
Chad	no data	no data	no data	no data	[illegible]	[illegible]	no data	no data
Congo	Yes		no data	no data	[illegible]	[illegible]	No	Yes
Democratic Republic of the Congo	No	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Equatorial Guinea	no data	no data	No	No	[illegible]	[illegible]	no data	no data
Gabon	no data	no data	Yes		[illegible]		No	Yes
Sao Tome and Principe	no data	no data	no data	no data	[illegible]	[illegible]	No	No
Northern Africa								
Algeria	Yes	no data	No	Yes	[illegible]	[illegible]	Yes	
Egypt	Yes	no data	No	Yes	[illegible]	[illegible]	Yes	
Libya	No	Yes	No	No	[illegible]	[illegible]	No	No
Morocco	Yes		Yes		[illegible]		Yes	
Sudan	Yes		no data	no data	[illegible]		Yes	
Tunisia	Yes	[illegible]	Yes		[illegible]		No	Yes

Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws *(continued)*

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
Southern Africa								
Botswana	Yes	[illegible]	Yes		[illegible]	[illegible]	Yes	
Lesotho	[illegible]	[illegible]	no data	no data	[illegible]		No	No
Namibia	No	[illegible]	no data	no data	[illegible]	[illegible]	No	Yes
South Africa	Yes	[illegible]	Yes		[illegible]	[illegible]	Yes	
Swaziland	Yes	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Western Africa								
Benin	Yes	[illegible]	No	No	[illegible]		No	Yes
Burkina Faso	Yes	[illegible]	Yes		[illegible]		No	Yes
Cape Verde	[illegible]	[illegible]	Yes		[illegible]		Yes	
Côte d'Ivoire	Yes	[illegible]	Yes		[illegible]		Yes	
Gambia	Yes	[illegible]	Yes		[illegible]		Yes	
Ghana	[illegible]	[illegible]	Yes		[illegible]		Yes	
Guinea	No	[illegible]	No	No	[illegible]	[illegible]	No	No
Guinea-Bissau	No	[illegible]	Yes		[illegible]	[illegible]	No	No
Liberia	Yes	[illegible]	Yes		[illegible]		No	No
Mali	No	Yes	No	No	[illegible]		Yes	
Mauritania	no data	no data	no data	no data	no data	no data	No	No
Niger	No	Yes	No	Yes	[illegible]	[illegible]	No	Yes
Nigeria	No	Yes	No	Yes	[illegible]	[illegible]	No	Yes
Senegal	Yes	[illegible]	Yes		[illegible]		Yes	
Sierra Leone	No	[illegible]	Yes		[illegible]		No	No
Togo	No	Yes	No	Yes	[illegible]	[illegible]	No	Yes
Asia and Oceania								
Eastern Asia								
China	Yes*		Yes		No	No	Yes	
Democratic People's Republic of Korea	no data	no data	no data	no data	no data	no data	no data	no data
Mongolia	Yes	[illegible]	no data	no data	[illegible]	[illegible]	no data	no data
Republic of Korea	Yes	[illegible]	Yes		[illegible]		Yes	
Southern Asia								
Afghanistan	No	Yes	No	No	[illegible]	[illegible]	No	No
Bangladesh	[illegible]	[illegible]	Yes		no data	no data	Yes	
Bhutan	Yes	[illegible]	Yes		[illegible]		Yes	
India	[illegible]	[illegible]	No	No	[illegible]		Yes	
Iran (Islamic Republic of)	Yes	[illegible]	No	No	[illegible]		Yes	
Maldives	No	No	no data	no data	[illegible]	[illegible]	No	No
Nepal	Yes	[illegible]	no data	no data	[illegible]		Yes	
Pakistan	Yes	[illegible]	no data	no data	[illegible]	[illegible]	No	Yes
Sri Lanka	[illegible]	[illegible]	no data	no data	no data	no data	Yes	

Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws *(continued)*

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
South-Eastern Asia								
Brunei Darussalam	[illegible]	[illegible]	Yes		[illegible]	[illegible]	Yes	
Cambodia	[illegible]	[illegible]	No	Yes	[illegible]	[illegible]	No	Yes
Indonesia	[illegible]	[illegible]	Yes		[illegible]		Yes	
Lao People's Democratic Republic	[illegible]	[illegible]	Yes		[illegible]	[illegible]	No	No
Malaysia	[illegible]	[illegible]	Yes		[illegible]		Yes	
Myanmar	[illegible]	[illegible]	Yes		[illegible]	[illegible]	Yes	
Philippines	[illegible]	[illegible]	Yes		[illegible]		Yes	
Singapore	[illegible]	[illegible]	Yes		[illegible]		Yes	
Thailand	[illegible]	[illegible]	Yes		[illegible]		Yes	
Timor-Leste	no data	no data	no data	no data	[illegible]	[illegible]	no data	no data
Viet Nam	[illegible]	[illegible]	Yes		[illegible]		Yes	
Western Asia								
Bahrain	[illegible]	[illegible]	Yes		[illegible]	[illegible]	Yes	
Iraq	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	Yes
Jordan	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	Yes	
Kuwait	[illegible]	[illegible]	Yes		[illegible]		No	Yes
Lebanon	[illegible]	[illegible]	No	Yes	[illegible]	[illegible]	No	No
Oman	[illegible]	[illegible]	no data	no data	[illegible]		Yes	
Qatar	[illegible]	[illegible]	Yes		[illegible]	[illegible]	No	Yes
Saudi Arabia	[illegible]	[illegible]	No	No			Yes	
Syrian Arab Republic	[illegible]	[illegible]	No	Yes	[illegible]	[illegible]	Yes	
Turkey	[illegible]	[illegible]	Yes		[illegible]	[illegible]	Yes	
United Arab Emirates	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	Yes	
Yemen	[illegible]	[illegible]	no data	no data	[illegible]		No	Yes
Oceania								
Fiji	[illegible]	[illegible]	Yes		[illegible]	[illegible]	Yes	
Kiribati	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	Yes	
Marshall Islands	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Micronesia (Federated States of)	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Nauru	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Palau	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	no data	no data
Papua New Guinea	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Samoa	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	Yes	
Solomon Islands	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Tonga	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	Yes	
Tuvalu	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Vanuatu	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No

Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws *(continued)*

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
Latin America and the Caribbean								
Central America								
Belize	[illegible]		Yes		[illegible]		No	No
Costa Rica	[illegible]		Yes		[illegible]		Yes	
El Salvador	[illegible]	[illegible]	Yes		[illegible]	[illegible]	No	Yes
Guatemala	[illegible]		No	No	[illegible]	[illegible]	No	Yes
Honduras	[illegible]		Yes		[illegible]	[illegible]	No	No
Mexico	[illegible]		Yes		[illegible]		Yes	
Nicaragua	[illegible]		Yes		[illegible]		No	No
Panama	[illegible]		Yes		[illegible]	[illegible]	Yes	
South America								
Argentina	[illegible]		Yes		[illegible]		Yes	
Bolivia (Plurinational State of)	[illegible]		No	No	[illegible]		Yes	
Brazil	[illegible]		Yes		[illegible]		Yes	
Chile	[illegible]		Yes		[illegible]		Yes	
Colombia	[illegible]		Yes		[illegible]		Yes	
Ecuador	[illegible]		Yes		[illegible]		No	No
Guyana	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	No	No
Paraguay	[illegible]		Yes		[illegible]		Yes	
Peru	[illegible]		Yes		[illegible]		Yes	
Suriname	[illegible]	[illegible]	no data	no data	[illegible]	[illegible]	no data	no data
Uruguay	[illegible]		Yes		[illegible]		Yes	
Venezuela (Bolivarian Republic of)	[illegible]		Yes		[illegible]	[illegible]	Yes	
Caribbean								
Antigua and Barbuda	[illegible]		no data	no data	[illegible]	[illegible]	Yes	
Bahamas	[illegible]		no data	no data	[illegible]		Yes	
Barbados	[illegible]		No	No	[illegible]	[illegible]	Yes	
Cuba	[illegible]	[illegible]	No	No	[illegible]		No	Yes
Dominica	[illegible]		Yes		[illegible]		No	No
Dominican Republic	[illegible]		No	No	[illegible]		Yes	
Grenada	[illegible]		no data	no data	[illegible]		Yes	
Haiti	[illegible]	[illegible]	No	Yes	[illegible]	[illegible]	No	No
Jamaica	[illegible]		Yes		[illegible]		Yes	
Saint Kitts and Nevis	[illegible]		no data	no data	[illegible]		Yes	
Saint Lucia	[illegible]		no data	no data	[illegible]		No	Yes
Saint Vincent and the Grenadines	[illegible]		no data	no data	[illegible]		Yes	
Trinidad and Tobago	[illegible]		no data	no data	[illegible]		Yes	

Annex 3. Availability of legislation or draft legislation in key areas of cyberlaws *(continued)*

UNCTAD member States	Electronic transactions		Consumer protection		Privacy and data protection		Cybercrime	
	Legislation	Draft	Legislation	Draft	Legislation	Draft	Legislation	Draft
Transition economies								
Albania	[illegible]		Yes		[illegible]		Yes	No
Armenia	[illegible]		no data	no data	[illegible]		Yes	[illegible]
Azerbaijan	[illegible]		no data	no data	[illegible]		Yes	
Belarus	[illegible]		No	No	[illegible]		Yes	[illegible]
Bosnia and Herzegovina	[illegible]		Yes		[illegible]		Yes	
Georgia	[illegible]		no data	no data	[illegible]		Yes	[illegible]
Kazakhstan	[illegible]		no data	no data	[illegible]		Yes	
Kyrgyzstan	[illegible]		no data	no data	[illegible]		no data	no data
Montenegro	[illegible]		no data	no data	[illegible]		Yes	
Republic of Moldova	[illegible]		no data	no data	[illegible]		No	Yes
Russian Federation	[illegible]		no data	no data	[illegible]		Yes	
Serbia	[illegible]		no data	no data	[illegible]		Yes	[illegible]
Tajikistan	[illegible]		no data	no data	[illegible]		no data	no data
The former Yugoslav Republic of Macedonia	[illegible]		no data	no data	[illegible]		Yes	[illegible]
Turkmenistan	[illegible]		no data	no data	[illegible]	[illegible]	no data	no data
Ukraine	[illegible]		no data	no data	[illegible]		No	Yes
Uzbekistan	[illegible]		no data	no data	[illegible]	[illegible]	Yes	

Source: UNCTAD, based on data from Graham Greenleaf, Stephen Mason, the Commonwealth secretariat, the Council of Europe, DLA Piper, Google, Norton Rose Fulbright, the OECD, The Paypers, UNCITRAL, UNODC, and ESCWA.

* Countries with e-transactions legislation based on UNCITRAL texts.

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SELECTED UNCTAD PUBLICATIONS IN THE AREA OF SCIENCE, TECHNOLOGY AND ICT FOR DEVELOPMENT

A. Flagship reports

Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries. United Nations publication. Sales No. E.15.II.D.1. New York and Geneva.

Information Economy Report 2013: Cloud Computing and Developing Countries. United Nations publication. Sales No. E.13.II.D.6. New York and Geneva.

Information Economy Report 2012: The Software Industry and Developing Countries. United Nations publication. Sales No. E.12.II.D.14. New York and Geneva.

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Information Economy Report 2007-2008: Science and Technology for Development – The New Paradigm of ICT. United Nations publication. Sales No. E.07.II.D.13. New York and Geneva.

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Technology and Innovation Report 2011: Powering Development with Renewable Energy Technologies. United Nations publication. Sales No. E.11.II.D.20. New York and Geneva.

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B. ICT Policy Reviews

ICT Policy Review of Egypt. United Nations publication (2011). UNCTAD/DTL/STICT/2011/6. New York and Geneva.

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Science, Technology and Innovation Policy Review: Dominican Republic. United Nations publication (2012). UNCTAD/DTL/STICT/2012/1. New York and Geneva.

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E. Publications by the Partnership on Measuring ICT for Development

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Measuring the WSIS Targets – A Statistical Framework. ITU publication (2011). Geneva.

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International organization	☐	Other (please specify)	☐

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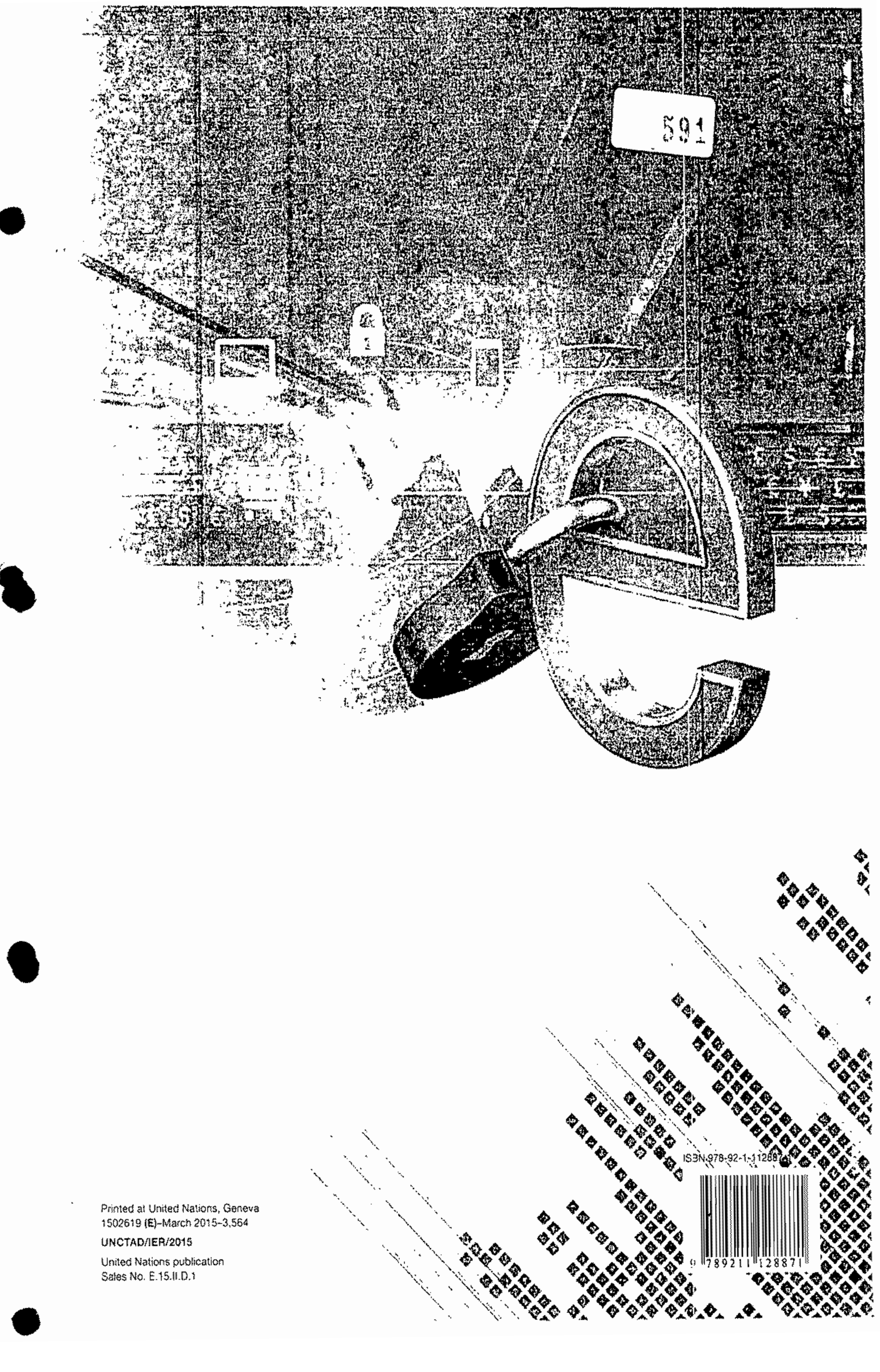

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ANNEXURE - P-11

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

WORLD INVESTMENT REPORT 2014

INVESTING IN THE SDGs: AN ACTION PLAN

NOTE

The Division on Investment and Enterprise of UNCTAD is a global centre of excellence, dealing with issues related to investment and enterprise development in the United Nations System. It builds on four decades of experience and international expertise in research and policy analysis, intergovernmental consensus-building, and provides technical assistance to over 150 countries.

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Developed countries: the member countries of the OECD (other than Chile, Mexico, the Republic of Korea and Turkey), plus the new European Union member countries which are not OECD members (Bulgaria, Croatia, Cyprus, Latvia, Lithuania, Malta and Romania), plus Andorra, Bermuda, Liechtenstein, Monaco and San Marino.

Transition economies: South-East Europe, the Commonwealth of Independent States and Georgia.

Developing economies: in general all economies not specified above. For statistical purposes, the data for China do not include those for Hong Kong Special Administrative Region (Hong Kong SAR), Macao Special Administrative Region (Macao SAR) and Taiwan Province of China.

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The boundaries and names shown and designations used on the maps presented in this publication do not imply official endorsement or acceptance by the United Nations.

The following symbols have been used in the tables:

- Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;
- A dash (–) indicates that the item is equal to zero or its value is negligible;
- A blank in a table indicates that the item is not applicable, unless otherwise indicated;
- A slash (/) between dates representing years, e.g., 1994/95, indicates a financial year;
- Use of a dash (–) between dates representing years, e.g., 1994–1995, signifies the full period involved, including the beginning and end years;
- Reference to "dollars" ($) means United States dollars, unless otherwise indicated;
- Annual rates of growth or change, unless otherwise stated, refer to annual compound rates;

Details and percentages in tables do not necessarily add to totals because of rounding.

The material contained in this study may be freely quoted with appropriate acknowledgement.

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PREFACE

This edition of the World Investment Report provides valuable analysis that can inform global discussions on how to accelerate progress toward the Millennium Development Goals and shape a long-range vision for a more sustainable future beyond 2015.

The Report reveals an encouraging trend: after a decline in 2012, global foreign direct investment flows rose by 9 per cent in 2013, with growth expected to continue in the years to come. This demonstrates the great potential of international investment, along with other financial resources, to help reach the goals of a post-2015 agenda for sustainable development. Transnational corporations can support this effort by creating decent jobs, generating exports, promoting rights, respecting the environment, encouraging local content, paying fair taxes and transferring capital, technology and business contacts to spur development.

This year's World Investment Report offers a global action plan for galvanizing the role of businesses in achieving future sustainable development goals, and enhancing the private sector's positive economic, social and environmental impacts. The Report identifies the financing gap, especially in vulnerable economies, assesses the primary sources of funds for bridging the gap, and proposes policy options for the future.

I commend this Report to all those interested in steering private investment towards a more sustainable future.

BAN Ki-moon
Secretary-General of the United Nations

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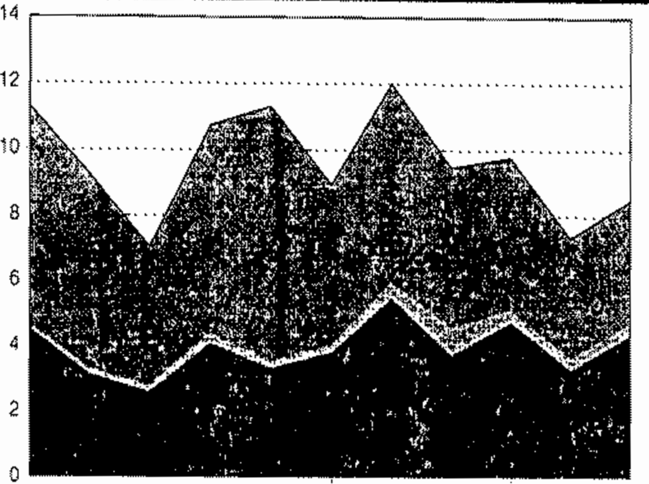
Figure I.16. Value of greenfield FDI projects announced in pharmaceuticals, by group of economies, 2003–2013
(Billions of dollars)



Source: UNCTAD, based on information from the Financial Times Ltd, fDi Markets (www.fDimarkets.com).

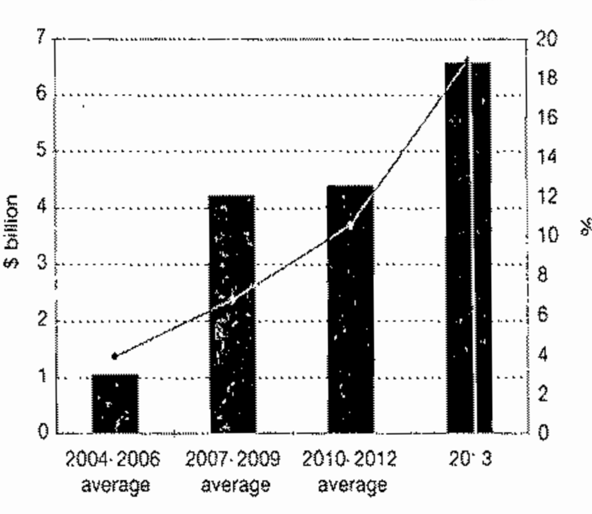
Pharmaceutical TNCs' growing interest in emerging markets as a new platform for growth will expand opportunities for developing and transition economies to attract investment. In Africa, for example, where the growing middle class is making the market more attractive to the industry, the scale and scope of manufacturing and R&D investments are likely to expand to meet increasing demands for drugs to treat non-communicable diseases.[26] At the same time, TNCs may become more cautious about their operations and prospects in emerging markets as they face shrinking margins for generics[27] as well as bribery investigations,[28] concerns about patent protection of branded drugs,[29] and failures of acquired developing-country firms to meet quality and regulatory compliance requirements.[30]

For some developing and transition economies, the changing global environment in this industry poses new challenges. For example, as India and other generic-drug-manufacturing countries start to export more drugs to developed economies, one possible scenario is a supply shortage in poor countries, leading to upward pressures on price, which will adversely affect access to inexpensive, high-quality generic drugs by people in need (UNCTAD 2013a). In Bangladesh, where the domestic manufacturing base for generics has been developed by restricting FDI and benefitting from TRIPS exemptions, the Government will have to make substantial changes in its policies and in development strategies pertaining to its pharmaceutical industry in order to achieve sustainable growth.[31]

c. *Retail*

Changing industrial context. The global retail industry is in the midst of an industrial restructuring, driven by three important changes. First, the rise of e-commerce is changing consumers' purchasing behaviour and exerts strong pressures on the traditional retail sector, particularly in developed countries and high-income developing countries. Second, strong economic growth and the rapid expansion of the middle class have created important retail markets in not only large emerging

Figure I.17. Cross-border M&A deals in pharmaceuticals[a] targeted at developing and transition economies, 2004–2013



Source: UNCTAD FDI-TNC-GVC Information System, cross-border M&A database.
[a] Includes biological products.

markets but also other relatively small developing countries. Third, competition has intensified, and margins narrowed, as market growth has slowed. In some large emerging markets, foreign retailers now face difficulties because of the rising number of domestic retailers and e-commerce companies alike, as well as rising operational costs due to higher real estate prices, for example.

These changes have significantly affected the internationalization strategies and practices of global retailers. Some large retail chains based in developed countries have started to optimize the scale of their businesses to fewer stores and smaller formats. They do this first in their home countries and other developed-country markets, but now the reconfiguration has started to affect their operations in emerging markets. In addition, their internationalization strategies have become more selective: a number of the world's largest retailers have slowed their expansion in some large markets (e.g. Brazil, China) and are giving more attention to other markets with greater growth potential (e.g. sub-Saharan Africa).

Global retailers slow their expansion in large emerging markets. Highly internationalized, the top five retail TNCs (table I.2) account for nearly 20 per cent of the total sales of the world's 250 largest retailers, and their share in total foreign sales is more than 30 per cent.[32] The latest trends in their overseas investments showcase the effects of an overall industry restructuring on firms' international operations. For instance, the expansion of Wal-Mart (United States) in Brazil and China has slowed. After years of rapid expansion, Wal-Mart has nearly 400 stores in China, accounting for about 11 per cent of Chinese hypermarket sales. In October 2013, the company announced that it would close 25 underperforming stores, some of which were gained through the acquisition of Trust-Mart (China) in 2007.[33]

A number of companies undertake divestments abroad in order to raise cash and shore up balance sheets,[34] and it seems that regional and national retailers have accordingly taken the opportunity to expand their market shares, including through the acquisition of assets sold by TNCs. Carrefour (France) sold $3.6 billion in assets in 2012, withdrawing from Greece, Colombia and Indonesia. In 2013, the French retailer continued to downsize and divest internationally. In April, it sold a 12 per cent stake in a joint venture in Turkey to its local partner, Sabanci Holding, for $79 million. In May, it sold a 25 per cent stake in another joint venture in the Middle East to local partner MAF for $680 million. Carrefour has also closed a number of stores in China.

New growth markets stand out as a focus of international investment. Some relatively low-income countries in South America, sub-Saharan Africa and South-East Asia have become increasingly attractive to FDI by the world's top retailers. After the outbreak of the global financial crisis, the international expansion of large United States and European retailers slowed owing to economic recession and its effects on consumer spending in many parts of the world. Retailers' expansion into large emerging markets also slowed, as noted above. However, Western retailers continued to establish and expand their presence in the new growth markets, because of their strong economic growth, burgeoning middle

Table I.2. Top 5 TNCs in the retail industry, ranked by foreign assets, 2012
(Billions of dollars and number of employees)

Corporation	Home economy	Sales		Assets		Employment		Countries of operation	Transnationality Index[a]
		Foreign	Total	Foreign	Total	Foreign	Total		
Wal-Mart Stores Inc	United States	127	447	84	193	800 000	2 200 000	28	0.76
Tesco PLC	United Kingdom	35	103	39	76	219 298	519 671	33	0.84
Carrefour SA	France	53	98	34	61	267 718	364 969	13	0.57
Metro AG	Germany	53	86	27	46	159 344	248 637	33	0.62
Schwarz Group[b]	Germany	49	88	..	..	..	..	26	0.56

Source. UNCTAD, based on data from Thomson ONE.

[a] The Transnationality Index is calculated as the average of the following three ratios: foreign to total assets, foreign to total sales and foreign to total employment, except for Schwarz Group which is based on the foreign to total sales ratio.

[b] Data of 2011.

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

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20.	**Annexure-P12**: A copy of the Information Bulletin No.LARRDIS(EF) 2014/IB-12.	601-604
21.	**Annexure-P13 (Colly.)**: A copy of the discussion paper alongwith the Respondent no.1's notification and the response of Petitioner No.1 dated 28.1.2014.	605-617
22.	**Annexure-P14 (Colly)**: Copies of the web-pages of various online market place e-commerce website which are in reality B2C.	618-638
23.	**Annexure-P15**: A copy of the "Master Circular on Miscellaneous Remittances from India – Facilities for Residents" stipulates issued by RBI.	639-684
24.	**Annexure-P16**: A copy of the order of Competition Commission of India in Case No.80/2014.	685-694
25.	**Annexure-P17**: A copy of the responses provided by the Petitioners and various other persons to the Government of India to the above discussion paper. ... Continue in vol.-V	695-802

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

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RESEARCH AND INFORMATION DIVISION

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No. LARRDIS (EF) 2014/IB-12 December-2014

E-COMMERCE IN INDIA: GROWTH, PROSPECTS AND CHALLENGES

What is E-Commerce?

E-commerce means sale or purchase of goods and services conducted over network of computers or TV channels by methods specifically designed for the purpose. Even though goods and services are ordered electronically, payments or delivery of goods and services need not be conducted online. The bookings done through electronic communication could be Business to Business or Business to Consumer. Business to Business *i.e.* (B2B) is e-commerce between businesses such as between a manufacturer and a wholesaler or between a wholesaler and a retailer. As per a WTO report, global Business to Business transactions comprise 90% of all e-commerce.

Business done electronically between manufacturers/ wholesalers/retailers and consumers for purchase or sale of goods and services is known as Business to Consumer (B2C) e-commerce. This type of e-commerce is generally what a common person has in mind when we talk about e-commerce business. Some of the popular examples of B2C e-commerce websites include amazon.com, flipkart.com, ebay.com, etc. Over 70% of all B2C e-commerce transactions in India are travel related. The non-travel B2C segment is E-tailing that focuses only on trading in goods (merchandise) such as electronic items and personal items like apparels, jewellery, etc., and is one of the fastest growing components of e-commerce.

There are several variants in B2C model that operate in e-commerce arena. From the point of view of business, there are two models of e-commerce. First model is known as 'Market Place' model, which works like exchange for buyers and sellers. The 'Market Place' provides a platform for business transactions between buyers and sellers to take place and, in return for the services provided, earns commission from sellers of goods/services. Ownership of the inventory in this model vests with the enterprises which advertise their products on the website and are ultimate sellers of goods or services. The 'Market Place', thus, works as a facilitator of e-commerce. Different from the Market Place model is the second category of business known as 'Inventory Based' model. In this model, ownership of goods and services and market place vests with the same entity. This model does not work as a facilitator of e-commerce, but is engaged in e-commerce directly.

Some other variants of e-commerce are: Consumer-to-Consumer (C2C) which involves transactions between and among consumers. For example, many sites, such as, sulekha.com, olx.in, etc. offer forums where individuals can buy and sell. Mobile Commerce (M-commerce) essentially involves use of mobile phones to do online transactions.

Status of E-Commerce in India

Some key statistics relating to the growth of the e-commerce sector in India are as follows:

- E-commerce market in India is growing at the rate of 34% compound annual growth rate (CAGR) since 2009. The market is expected to reach US$ 15 billion by the end of 2014.
- Online travel segment contributes to 71% of the total e-commerce industry in India.
- E-tailing is the largest and the fastest growing category in the non-travel segment of e-commerce constituting 16% of the total share in e-commerce in 2012.
- E-tailing captures less than 1% of the retail pie in India which is very low as compared to 6% in China and 5% in the USA.
- Internet penetration in India is abysmally low at 11%, internet penetration of 25% will be a tipping point for e-commerce growth in India.

The employment potential of e-commerce in India, both direct and indirect, is huge. Another significant aspect related to e-commerce has been the increasing participation by small and medium enterprises either as service suppliers or consumers. The Internet has opened many business opportunities to small and medium-sized suppliers in many countries, including in India. It has also helped in stimulating entrepreneurial activities across the globe. In India also, as the availability and penetration of Internet has increased over the years, many e-commerce companies have come into existence to serve the consumers. The growing e-commerce industry is also having positive spillover effect on associated industries such as logistics, online advertising, media and IT.

Although many factors support the growth of e-commerce in India, the fledgling industry is faced with significant hurdles with respect to infrastructure, governance and regulation. Low internet penetration of 11 per cent impedes the growth of e-commerce by limiting the internet access to a broader segment of the population. Poor last mile connectivity due to missing links in supply chain infrastructure is limiting the access to far flung areas where a significant portion of the population resides. High dropout rates of 25-30 per cent on payment gateways, consumer trust deficit and slow adoption of online payments are compelling e-commerce companies to rely on costlier payment methods such as Cash on Delivery (COD).

In India, the B2C e-commerce comprises only 10% of all e-commerce transactions; and out of that, over 70% of all consumer e-commerce transactions in India are travel related, comprising mainly of online booking of airline tickets, railway tickets and hotel bookings. The biggest players in the travel category are Makemytrip.com, Yatra.com and the IRCTC website for railway bookings. Non-travel related online commerce comprises 25-30 per cent of the B2C e-commerce market. The unfettered growth of online travel category has been possible because the regulatory and infrastructure issues do not impede its growth. Also, it does not face the infrastructure challenges since the goods need not be transferred physically.

Expansion of E-Commerce : Role of Cloud Computing and Data Centres

The cloud computing ***(see Box-1)*** and mobile applications are critical aspects of the expanding e-commerce business in recent years. The cloud is essentially a network of remote servers which enables companies to store, manage and process data and use programmes through a web-based interface. The data and programmes stored in the cloud can be accessed from anywhere through various devices with web connectivity, which is an advantage for small companies who don't have a huge IT budget.

Box-1
Cloud Computing

Cloud computing is computing in which large groups of remote services are networked to allow the centralized data storage, and online access to computer services or resources. Cloud computing may be public as well as private.

A recent Gartner Report has indicated that the public cloud services ***(see Box-2)*** market in India is on pace to grow at 32.2 per cent in 2014 to total US$ 556.8 million, an increase from 2013 revenue of US$ 421 million. Spending on Software-as-a-Service (SaaS) will total US$ 220 million in 2014, growing at 33.2 per cent compared to last year. SaaS is the largest overall cloud market segment, followed by Infrastructure-as-a-Service (IaaS) totaling US$ 78 million and Business Process-as-a-Service (BPaaS), totalling US$ 75 million.

Box-2
Types of Cloud Services

- Infrastructure-as-a-Service (IaaS): Cloud service providers offer customers virtualised and scalable storage, computing and network resources, which can be provisioned/de-provisioned and made available on a pay-per-use basis.
- Platform-as-a-Service (PaaS): Cloud service providers offer customers development platforms or middleware to create applications that can be deployed on a public or private Cloud.
- Software-as-a-Service (SaaS): Cloud service providers offer customers applications that are delivered over the internet and are enabled for multi-tenancy to support multiple clients.
- Business Process-as-a-Service (BPaaS): The service provider delivers outsourced solutions for business processes to customers over the internet.

Many reports suggest that for the 50 million or so startups and small businesses in India, cloud computing is set to be a game changer. Already, the number of small businesses in India using Google Apps, a cloud hosting service, has grown by 70 per cent in the past years. Historically, small companies had poor tech choices–they could either use expensive software designed for large companies or inexpensive software lacking functionality. Today, cloud is levelling the playing field. The potential for India is huge. India is home to around 47 million small businesses, yet only 1 per cent are online. Google isn't alone in the opportunistic pursuit of India's cloud potential. Microsoft, an entrenched player in the Indian market, is using some innovative initiatives to tap the small business segment. Recently, the software giant announced a trade-in scheme for small enterprises to exchange their used personal computers for credits to use the company's cloud-based Windows Azure platform.

India is also bound to witness a huge growth in data centre operations owing to the strong demand for cloud computing services. In a National Association of Software and Services Companies (NASSCOM) study, it has been indicated that Indian cloud computing market would reach US$ 16 billion by 2020. Of this market, data centres are experiencing a rapid growth and likely to grow at a rate of 22 per cent per year. The major sectors affecting the growth of data centres in India are: Banking & Financial Services Industry (BFSI), Telecom, IT and Social Media. Other factors impacting the growth of data centres in India include:

- Government's e-governance policy: Creation of State Wide Network; National Informatics Centre (NIC); State Data Centres.
- New initiatives of the Government like Digital India, smart cities and the Jan-Dhan financial inclusion schemes which offer significant opportunity for hosting data and cloud services.
- Reduction of bandwidth cost.

Despite this, none of the large cloud computing companies, including Amazon, Google and Microsoft, has so far built a local data centre. Microsoft has 13 data centres globally to serve its cloud services while Amazon

has 8 and Google 12. In Asia, all three companies have data centres in Singapore, but none in Mainland China or India. Unpredictable power supply, patchy internet connectivity, limited bandwidth and unreliable optical fibre connectivity between different parts of the country have so far prevented these companies from setting up data centres in the country. However, with cloud adoption increasing rapidly, this is set to change.

Recent newspaper reports state that Microsoft may become the first MNC to set up cloud data centres in India. Currently, the company offers cloud computing services to Indian customers through its global data centres. The Reserve Bank of India's guidelines prohibit storing any customer data outside India, which limits cloud adoption by financial services companies. This could be one reason why Microsoft is looking at setting up data centre in India.

Existing Regulatory Framework for E-commerce in India

The mandate of the Department of Electronics and Information Technology is to deal with all matters related to information technology, electronics and internet (except licensing of service providers) and also to provide assistance to other departments in the promotion of e-governance, e-commerce, e-medicine, e-infrastructure, etc. However, it does not specifically talks about regulating e-commerce activities in India.

As per the extant FDI policy, FDI up to 100%, under the automatic route, is permitted in B2B e-commerce activities. However, the extant FDI policy does not permit FDI in B2C e-commerce. In other words, retail trading in any form, by means of e-commerce, would not be permissible for companies with FDI engaged in the activity of single brand retail trading or multi-brand retail trading.

The Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involves the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies. Then there is the Consumer Protection Act, 1986. Though, nothing in this Act refers explicitly to e-commerce consumers, it provides for regulation of trade practices, creation of national and state level Consumer Protection Councils, consumer disputes redressal forums at the national, state and district level to redress disputes and, for recognized consumer associations, to act on behalf of the consumers. The Act provides a detailed list of unfair trade practices, but it is not exhaustive.

The legal requirements for undertaking e-commerce in India also involve compliance with other laws like Contract Law, Indian Penal Code, etc. The Information Technology (Intermediary Guidelines) Rules, 2011 prescribe stringent liabilities for e-commerce websites to ensure privacy protection, data protection, data security, cyber security, confidentiality maintenance, etc.

As far as online payment system under e-commerce is concerned, the Department of Payment and Settlement Systems (DPSS) of the RBI regulates various payment systems operating in the country in the following manner:

(i) Online shopping in India involves compliance with the banking and financial norms as laid by the RBI. For instance, take the example of PayPal *(see Box-3)*. If PayPal has to allow online payments (receipt and disbursements) for its existing or proposed e-commerce activities, it has to take a license from the Reserve Bank of India (RBI) in this regard.

(ii) The RBI regulates electronic payment systems such as card not present transactions *(see Box-4)* that enable e-commerce.

(iii) The RBI has also issued directions for opening and operation of accounts and settlement of payments for online payment transactions involving intermediaries. This is with a view to safeguarding the interests of the customers and to ensure that the payments made by them using online payment modes are duly accounted for by the intermediaries receiving such payments and remitted to the accounts of the merchants who have supplied the goods and services without undue delay.

Box-3
PayPal

PayPal is an American international e-commerce business allowing payments and money transfers to be made through the Internet. Online money transfers serve as electronic alternatives to paying with traditional paper methods, such as cheques and money orders.

It is worth noting that legal issues of e-commerce in India are different for different categories of e-commerce. For instance, electronic trading of medical drugs in India requires more stringent e-commerce and legal compliances as compared to other e-commerce activities.

Box-4
Card Not Present (CNP) Transactions

CNP transaction is the terminology used by the RBI to describe transactions made without actually swiping the card but using details given on the card. The RBI has made the second factor authentication, a one-time or permanent password, mandatory for CNP transactions in India.

Emerging Challenges and Constraints

The regulatory framework for e-commerce is in its evolving stage in India. There is no dedicated nodal regulator for governing e-commerce activities in India. E-commerce activities are subject to a number of regulations spreading across various departments/ ministries/regulatory bodies of the Government of India. In such situation, co-ordination among various agencies and fixing responsibility and accountability among them becomes problematic.

Broadly, two types of challenges are being faced by the e-commerce industry in India today. These are related to: (i) governance and regulatory issues; and (ii) infrastructural issues, both 'hard' and 'soft' infrastructure related issues. These have been discussed below:

Governance Issue

The growth of e-commerce and the multi-jurisdictional nature of e-commerce transactions raise fundamental questions about the way our taxation and administration

work. Traditionally, businesses were required to register under sales tax laws in order to be identified as a legal person for tax compliance. Each State has its own taxation framework and the States collect taxes based on the permanent establishment in their respective taxable jurisdictions. E-commerce is not territorially bound and is incompatible with a territorial definition of permanent establishment. With the advent of e-commerce, enterprises can set up business in the cyber-universe and assume virtual identities, thereby making it difficult for tax authorities to attribute income to an appropriate virtual entity especially for intangible goods. The land-and-water boundaries make it difficult to identify the rightful authority that should tax e-commerce transactions. To add to this, 'unregistered' enterprises exploit the definition of permanent establishment to their advantage in order to evade taxes. Further, due to difference in taxes across States, e-commerce enterprises set up warehouses in cities where taxes are lower.

Regulatory Issue

As per the extant FDI policy, FDI is not permitted in B2C e-commerce[1]. But 100% FDI is permitted under automatic route in B2B e-commerce. Research indicates that an estimated 70% to 80% of e-commerce companies are on life support and in dire need for funds. But faced with a double whammy of dried up capital and restrictions on FDI, some of these are forced to either shut shops or change business models from inventory model to a marketplace model[2] since marketplaces, by virtue of their very definition, do not fall under the ambit of the existing FDI norms.

Majority of the bigger players have been left with no option but to work around FDI restrictions by setting up back-end B2B entities wherein 100% FDI is allowed. The foreign funding flows into such B2B companies which also hold the inventory while the front-end B2C companies are kept clear of FDI and only issue invoices and collect payments from customers. While these legal structures may be in line with the provisions of the FDI law, they may or may not be in accordance with the spirit with which the law was brought into existence. In other words, these restrictions have forced the companies into complicating their businesses by complicating their structures.

Infrastructural Constraints

E-commerce relies on the 'hard' infrastructure, *i.e.* internet, logistics and supply chain, and also on the 'soft' infrastructure, *i.e.* payment gateways, digital money and data security. Additionally, as any other business, it is also dependent on human capital and the corresponding skills. The 'hard' and 'soft' infrastructure forms the backbone of the e-commerce business.

'Hard' Infrastructural Constraints: Internet penetration in India is still very low. The situation appears to be even worse if we consider the quality of internet connectivity and the number of people actually transacting online. The reasons behind the poor internet connectivity could be attributed to the following: high broadband price; poor quality and reliability of connection and; low accessibility of PCs in rural areas. Besides, the supply chain and logistics still remain a major problem area. The e-commerce industry in India is facing multiple challenges related to supply chain and logistics, especially with respect to order fulfilment. Poor last mile reach, high logistics cost, lack of e-commerce specific services and poor infrastructure in the country are some of the key challenges.

'Soft' Infrastructural Constraints: Even though payment gateways have evolved and multiple payment options have emerged over the years, the e-commerce industry in India still faces challenges related to high drop-out rates on payment gateways, insufficient penetration of credit cards and slow adoption of other digital payment options such as digital wallets ***(see Box-5)*** or mobile payments. Data security and authenticity of credit card transactions is a big regulatory challenge pertaining to the e-commerce transactions. There are many cases of credit card fraud and credit card information hacking while doing online transactions. This is more severe in the case of international websites and their online transactions. Domestic online transactions require secure 3D password (just like our PIN at the ATM), mandated by the RBI but such requirement is not applicable for international websites. This makes international online transactions vulnerable to misuse and hacking. Also, with increase in e-commerce and online payments, there is a proliferation of payment gateways and mobile wallets, many of which are facing risk of being misused by unscrupulous merchants.

Box-5
Digital Wallets

Digital wallets are example of prepaid payment instruments that facilitate purchase of goods and services against the value stored on these instruments. When issued in electronic form, these instruments facilitate e-commerce. Few Banks have been authorized by the RBI under the Payment and Settlement Systems Act, 2007 to issue such instruments.

Summing up

E-commerce is an emerging sector in the Indian economy, particularly in the post-economic reforms era. The revolution in the IT sector in the recent past has been instrumental in the development of e-commerce. E-commerce offers many benefits to various stakeholders. These include cost effectiveness, quick comparison shopping, better customer service, higher business margins resulting from economy in business operations, knowledge market development, etc. At present, there are several stumbling blocks in the development of e-commerce such as computer related initial investments, technological issues, computer illiteracy, legal hassles, adverse mindset of consumers, privacy and security issues. However, these barriers to e-commerce would be taken care of in due course and, hence,e-commerce has bright prospects in India.

[1] However, 51% FDI is permitted in multi-brand retail trading (MBRT) subjected to approval by individual States and with some riders, as considered necessary.

[2] Flipkart, which was an inventory e-commerce player, changed its model to 'market place' in 2012 to adhere to the Indian FDI rules for online retail companies. Both Amazon and Snapdeal operate on the pure market place model.

Prepared by Dr. B.C. Joshi, Additional Director and Smt. Musarrat Naushad, Joint Director of the Lok Sabha Secretariat under the supervision of Shri P.K. Misra, Additional Secretary and Shri C.N. Sathyanathan, Director with inputs from the Ministry of Commerce and Industry (Deptt. of Commerce), for the use and information of the Members of Parliament.

ANNEXURE - P-13
(Colly)

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Discussion Paper on
E-commerce in India

Introduction:

E-commerce in recent times has been growing rapidly across the world. According to Report of Digital-Commerce, IAMAI-IMRB (2013), e-commerce industry in India has witnessed a growth of US$ 3.8 billion in the year 2009 to US$ 9.5 billion in 2012. By 2013, the market is expected to reach US$12.6 billion, showing year to year growth of 34%. industry sources indicate that this growth can be sustained over a longer period of time as e-commerce will continue to reach new geographies and encompass new markets. E-commerce means sale or purchase of goods and services conducted over network of computers or TV channels by methods specifically designed for the purpose. Even though goods and services are ordered electronically, payments or delivery of goods and services need not be conducted online. E-commerce transaction can be between businesses, households, individuals, governments and other public or private organizations. There are numerous types of e-commerce transactions that occur online ranging from sale of clothes, shoes, books etc. to services such as airline tickets or making hotel bookings etc.

1.2 The bookings done through electronic communication could be Business to Business (B2B) or Business to Consumer (B2C). **Business to Business i.e. B2B** is e-commerce between businesses such as between a manufacturer and a wholesaler or between a wholesaler and a retailer. As per the WTO report WT/COMTD/W/193, global B2B transactions comprise 90% of all e-commerce. According to research conducted by USA based International Data Corporation, it is estimated that global B2B commerce, especially among wholesalers and distributors amounted to US$12.4 trillion at the end of 2012.

1.3 The bookings done electronically between **Business to Consumer** for purchase or sale of goods and services is known as **B2C e-commerce.** Although B2C e-commerce receives a lot of attention, B2B transactions far exceed B2C transactions. According to IDC, global B2C transactions are estimated to have reached US$ 1.2 trillion at the end of 2012, ten times less than B2B transactions. B2C e-Commerce entails business selling to general public/ e-catalogues that make use of shopping place. There are several variants in B2C model that operate in e-commerce arena.

1.4 From the point of view of business, there are two models of e-commerce. First model is known as 'Market Place' model, which works like exchange for buyers and sellers. The 'Market Place' provides a platform for business transactions between buyers and sellers to take place and in return for the services provided, earns commission from sellers of goods/services. Ownership of the inventory in this model vests with the number of enterprises which advertise their products on the website and are ultimate sellers of goods or services. The 'Market Place', thus, works as a facilitator of e-commerce. Different from the 'Market Place' model is the second category of business known as 'Inventory Based' model. In this model, ownership of goods and services and market place vests with the same entity. This model does not work as a facilitator of e-commerce, being delineated therefrom, but is engaged in e-commerce directly.

2. Status of the global e-commerce industry:

2.1 According to a report by the Interactive Media in Retail Group (IMRG), a U.K. online retail trade organization, Global business-to-consumer e-commerce sales will pass the **US$ 1,250 billion mark by 2013**, and the total number of Internet users will increase to approximately 3.5 billion. Around 90% of the global e-commerce transactions are in the nature of B2B, leaving meager 10% as B2C e-commerce.

2.2 The biggest e-commerce markets are U.S.A. followed by U.K. and Japan. In Asia, China, India and Indonesia are the fastest growing e-commerce markets. Major global e-Commerce companies are Alibaba.com, Amazon.com, Walmart, Apple, Dell, e-bay, Mercadolibre Inc., Rakuten Inc., Crate & Barrel, Symantec, Autozone, Microsoft, Gap, Nike, Disney stores, HP, ASOS PLC, Blue Nile Inc. etc.

3. **E-commerce in emerging economies:**

3.1 Middle class in many of the developing countries, including India, is rapidly embracing online shopping. However, India falls behind not only US, China and Australia in terms of Internet density, but also countries like Sri Lanka and Pakistan. Sri Lanka has an internet penetration of 15 percent. Better internet connectivity and the presence of an internet-savvy customer segment have led to growth of e-commerce in Sri Lanka with an existing market size of USD 2 billion. Pakistan, with an internet penetration of 15 percent has an existing market size of consumer e-commerce of USD 4 billion. Incidentally FDI in inventory-based consumer ecommerce is allowed in both these countries. (IAMAI-KPMG report, September 2013).

3.2 A.T. Kearney's 2012 E-Commerce Index examined the top 30 countries in the 2012 Global Retail Development Index™ (GRDI). Using 18 infrastructure, regulatory, and retail-specific variables, the Index ranks the top 10 countries by their e-commerce potential. The 2012 E-Commerce Index of emerging economies is given as under:

E-Commerce Index rank	2012 GRDI rank	Country	Region	Online market attractiveness (50%)	Online Infrastructure Establish-ment (20%)	Digital laws and regu-lations (15%)	Retail Development (15%)	2012
1	3	China	Asia	100	56	56	58	78
2	1	Brazil	Latin America	84	56	67	90	77
3	26	Russia	Eastern Europe	83	39	23	48	60
4	2	Chile	Latin America	35	78	100	71	59
5	28	Mexico	Latin America	53	41	75	26	50
6	7	United Arab Emirates	Middle East	22	100	77	49	50
7	11	Malaysia	Asia	27	78	79	46	48
8	4	Uruguay	Latin America	23	40	71	100	45
9	13	Turkey	Eastern Europe	25	76	65	33	43
10	8	Oman	Middle East	13	61	97	51	41

0= low attractiveness 0 = poor infrastructure 0 = no digital laws 0 = undeveloped retail market 100 = developed retail market

100 = high attractiveness 100 = developed infrastructure 100 = strong digital laws 100 = developed retail market

Sources : Euromnitor, International Telecommunication Union, Planet Retail, World Bank, Economic Forum; A.T.Kenney

3.3 Following are some other major findings of the Index:

i) China occupies first place in the Index. The G8 countries (Japan, United States, United Kingdom, Germany, France, Canada, Russia, and Italy) all fall within the Top 15.

ii) Developing countries feature prominently in the Index. Developing countries hold 10 of the 30 spots, including first-placed China. These markets have been able to shortcut the traditional online retail maturity curve as online retail grows at the same time that physical retail becomes more organized. Consumers in these markets are fast adopting behaviors similar to those in more developed countries.

iii) Several "small gems" are making an impact. The rankings include 10 countries with populations of less than 10 million, including Singapore, Hong Kong, Slovakia, New Zealand, Finland, United Arab Emirates, Norway, Ireland, Denmark, and Switzerland. These countries have active online consumers and sufficient infrastructure to support online retail.

iv) India is not ranked. India, the world's second most populous country at 1.2 billion, does not make the Top 30, because of low internet penetration (11 percent) and poor financial and logistical infrastructure compared to other countries.

3.4 It is seen that countries making in the top list of the table of e-commerce have required technologies coupled with higher internet density, high class infrastructure and suitable regulatory framework. India needs to work on these areas to realize true potential of e-commerce business in the country.

4. Status of e-commerce sector in India:

4.1 As already mentioned above, growth of e-commerce industry has been phenomenally high. However, its growth is dependent on a number of factors and most important of them is internet connectivity. As per Forrester McKinsey report of 2013, India has 137 million internet users with penetration of 11%. Total percentage of online buyers to internet users is 18%. Compared to India, China, Brazil, Sri Lanka and Pakistan have internet population of 538 (40%), 79 (40%), 3.2 (15%) and 29 (15%) millions respectively. Therefore, lower internet density continues to remain a challenge for e-commerce.

4.2 According to Report of Digital–Commerce, IAMAI-IMRB (2013), e-commerce is growing at the CAGR of 34% and is expected to touch US$ 13 billion by end of 2013. However, travel segment constitutes nearly 71% of the transactions of consumer e-commerce industry, meaning thereby that e-tailing has not taken of in India in any meaningful way. Share of e-tail has grown at the rate of 10% in 2011 to 16% in 2012.

4.3 Industry surveys suggest that e-commerce industry is expected to contribute around 4 percent to the GDP by 2020. In comparison, according to a NASSCOM report, by 2020, the IT-BPO industry is expected to account for 10% of India's GDP, while the share of telecommunication services in India's GDP is expected to increase to 15 percent by 2015. With enabling support, the e-commerce industry too can contribute much more to the GDP.

4.4 Around 90% of the global e-commerce transactions are stated to be in the nature of B2B, leaving meagre 10% as B2C e-commerce. Case of India is no different where most of such transactions are in the nature of B2B. Moreover Indian e-commerce industry is characterized by 'Market Place' model. It allows large number of manufacturers/traders especially MSMEs to advertise their products on the 'Market Place' and benefit from increased turnover.

4.5 The growing e-commerce industry can have a positive spillover effect on associated industries such as logistics, online advertising, media and IT/ITES. Currently e-commerce accounts for 15-20 percent of the total

revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020. Currently, the inventory based consumer e-commerce model alone provides direct employment to approximately 40,000 people and is estimated to create 1 million direct and another 0.5 million indirect jobs by 2020. Low entry barriers have attracted many young and enterprising individuals to try their hand at entrepreneurship. A significant 63% of e-commerce ventures have been started by first time entrepreneurs. Indian e-commerce industry is in nascent stage and is nowhere in the league of big global players. Major domestic e-commerce companies are Flipkart, Snapdeal, Fashionandyou, Myntrainktruit, Dealsandyou, Homeshop18 etc.

4.6 Although many factors support the growth of e-commerce in India, the fledgling industry is faced with significant hurdles with respect to infrastructure, governance and regulation. Low internet penetration of 11 percent impedes the growth of e-commerce by limiting the internet access to a broader segment of the population. Poor last mile connectivity due to missing links in supply chain infrastructure is limiting the access to far flung areas where a significant portion of the population resides. High dropout rates of 25-30 percent on payment gateways, consumer trust deficit and slow adoption of online payments are compelling e-commerce companies to rely on costlier payment methods such as Cash on Delivery (COD).

4.7 As stated earlier, over 70% of all consumer e-commerce transactions in India are travel related, comprising mainly of online booking of airline tickets, railway tickets and hotel bookings. The biggest players in the travel category are Makemytrip.com, Yatra.com and the IRCTC website for railway bookings. Non-travel related online commerce comprises 25-30 percent of the B2C e-Commerce market. The unfettered growth of online travel category has been possible because the regulatory and infrastructure issues do not impede its growth. Also, it does not face the infrastructure challenges since the goods need not be transferred physically.

5. Existing regulations on e-commerce in the country:

5.1 As per extant FDI policy, FDI, up to 100%, under the automatic route is permitted in B2B 'e-commerce activities'. The relevant paragraph 6.2.16.2.1 of 'Circular 1 of 2013-Consolidated FDI Policy', effective from 05 April, 2013, is given below:

"E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, *inter-alia* implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well."

Paragraphs 6.2.16.4 (2) (f) and 6.2.16.5(1) (ix) further provide that " Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single brand retail trading or multi-brand retail trading." As such, extant FDI policy does not permit FDI in B2C e-commerce.

5.2 **Information Technology Act, 2000** provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies.

5.3 India has the **Consumer Protection Act 1986**. However, nothing in the Act refers explicitly to e-commerce consumers. It provides for regulation of trade practices, creation of national and state level Consumer Protection Councils, consumer disputes redressal forums at the National, State and District level to redress disputes, class actions and for recognized consumer associations to act on behalf of the consumers. The Act provides a detailed list of unfair trade practices, but it is not exhaustive.

5.4 The legal requirements for undertaking e-commerce in India also involve compliance with other laws like Contract Law, Indian Penal Code, etc. Further, online shopping in India also involves compliance with the banking

and financial norms applicable in India. For instance, take the example of PayPal in this regard. If PayPal has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to take a license from Reserve Bank of India (RBI) in this regard. Further, cyber due diligence for Paypal and other online payment transferors in India is also required to be observed.

6. FDI in B2C e-commerce:

6.1 In recent months there has been a lot of interest and debate around permitting FDI in B2C e-commerce. While its proponents perceive enormous benefit, there is no dearth of people who have serious apprehensions to this proposition. In response to news reports appearing in print and electronic media, a number of representations have been received in this Department from different stakeholders. Their broad points of view are described in the following paragraphs.

6.2 A national level **body of internet and mobile phone companies**, highlighting the challenges as regulatory restriction to raise funds from foreign PE/VC, has suggested a caveat based approach to allowing FDI in the sector. Another national body of software and IT companies has made persuasive case for allowing FDI in B2C e-commerce. It is stated that e-commerce can be aligned to the objectives of national development by providing impetus to manufacturing sector, order consolidation and distribution, facilitating and supporting SMEs, improving outreach and access to buyers/sellers, bringing traceability and transparency in transactions, empowering consumers with information and data and finally creating new job opportunities. **One body of industries** has stated that MSMEs / traders are currently benefitting from e- commerce in India and there is huge scope of further involvement and growth of MSMEs / traders with further boost to e-commerce. Even small traders have enhanced their coverage by using e-commerce platforms like JustDial, Quikr etc. **An international council** has stated that India could reap enormous and nearly immediate benefits by creating an exemption from its retail FDI rules to permit the unrestricted marketing of retail goods through e-commerce.

6.3 A national **body of traders** has strongly opposed allowing any FDI in e-commerce. They have stated that Indian market is not yet ready for opening up e-retail space to foreign investors. Small time trading or opening corner stores still remains a large source of employment. FDI in the sector will have disastrous impact on this domestic industry leading to monopolies in e-commerce, manufacturing, logistics, retail sector etc. and causing large scale unemployment. Because of scale of economic operations, e-commerce players will have more bargaining powers than standalone traders. Allowing FDI in e-commerce will provide e-commerce players with complete geographical reach, which will be against the spirit of FDI in multi brand retail trade i.e. being restricted to cities with a population of more than one million in consenting states or any other city of their choice. Moreover, Indian e-commerce industry which is at a nascent stage of development will be seriously threatened.

6.4 Representations have also been received from certain multinational companies. One such MNC engaged in the inventory based e-commerce has stated that open and deregulated e-commerce sector would create new markets for small businesses/entrepreneur and help them scale at almost no cost and generate employment through investment/innovation in supply chain management, warehousing, logistic services and other ancillary sector. It is suggested that in order to bring much-needed parity between e-commerce and recently liberalized brick and mortar retail trade policy, enabling greater inclusion of remote consumers and small businesses, a separate policy framework for FDI in e-commerce that relies on nuanced, functionality-based treatment of e-commerce platforms in their various existent forms could be considered. Another MNC which also operates front end stores is in favour of opening the sector to FDI. However, another MNC engaged in 'Market Place' model of e-commerce having presence in the country since last few years has not given any views on opening of FDI for inventory based B2C e-commerce. It may be mentioned that FDI in Market Place model is already present in the country.

6.4.1 As regards domestic e-commerce companies, their views appear to be divided. This is on account of varying commercial considerations of entrepreneurs i.e. opting to stay in or exiting out of business, capital requirement, choosing between financial and strategic investment etc. One of the leading domestic companies has stated that India's e-commerce industry has been developed by first time Indian entrepreneurs with active participation from the PE / VC industry which has infused approx. US$ 2 billion in India's fledgling e-commerce

industry over the last 2 years. It is stated that the outlined need for foreign capital in this industry can be met by VCs and PEs which are willing to invest. Therefore, it is suggested that foreign capital in the inventory led e-commerce industry may be allowed in financial form and not in strategic form. However, 100% strategic investment over a period of 3 - 4 years in a phased manner, by which time these companies would build scale and can compete with large corporations, can be considered. Another domestic entity citing a number of benefits, has suggested to allow 100% FDI under automatic route in the sector, subject to certain conditions like no offline retail trading activity by B2C e-commerce company, 40% sourcing from SME/MSME and other local business and no sale of food/agriculture produce/ processed food on B2C e-commerce platforms.

7. **Advantages and disadvantages of FDI in B2C e-commerce:**

7.1 Following are stated to be the major advantages of FDI in the sector:

i) Boost to the intrastructural development: Increased capital will help to establish supply chain, distribution system and warehousing.
ii) Impetus to manufacturing sector: Growth in retail sector will have cascading effect in the manufacturing sector which will positively contribute to overall growth of economy and job creation.
iii) More efficient supply chain management: Will reduce the need for middlemen leading to lower transaction costs, reduced overhead and reduced inventory and labour costs.
iv) Adopting best global business practices: Will lead to better work culture and customer service.
v) Increased outreach: Will provide increased access to buyers/sellers, allow MSMEs and artisans to reach out to customers far beyond their immediate location, both locally within India and abroad.
vi) Traceability and transparency: Will not only empower consumers with information and data but also help in better compliance of regulatory framework.
vii) Reduced costs: On marketing and distribution, travel, materials and supplies will benefit businesses.
viii) Improved customer service: providing more responsive order taking and after-sales service to customers and competitive pricing.

7.2 Following are stated to be the major disadvantages of FDI in the sector:

i) Works against the spirit of FDI policy in MBRT. Allowing FDI in e-commerce will provide e-commerce players complete geographical reach which will be against the spirit of FDI in multi brand retail trade i.e. being restricted to cities with a population of more than one million or any other city as per the choice of consenting states.
ii) Indian market is not yet ready for opening up e-retail space to foreign investors. It will seriously impair small time trading of brick and mortar stores. Small time shopkeepers are not highly qualified and will not be able to compete with sound e-retail business format.
iii) Because of scale of economic operations, e-commerce players in the inventory based model will have more bargaining power than standalone traders and will resort to predatory pricing.
iv) The infrastructure created by major e-commerce players will be captive and government will not be able to achieve its objective of creating back end infrastructure.
v) Indian e-commerce market is at a nascent stage of development. With FDI in e-commerce, global players will have adverse impact on this domestic industry. It will lead to monopolies in e-commerce, manufacturing, logistics and retail sector.
vi) Inventory based e-commerce competes directly with MSMEs. Indian e-commerce B2C is growing in an eco- system with Indian owned/led companies offering open marketplace models which provide a technology platform to help MSME reach across India and even globally. These marketplaces do not compete with MSME or retailers and allow everyone to trade. On the other hand, allowing the entry of inventory based large foreign e-tailers may shrink Indian entrepreneurship and the MSME sector.

vii) MNCs may dump their cheaper products in the market causing a negative impact on the Indian manufacturing sector in general and to MSMEs in particular.

viii) Small time businesses/ kirana stores remain the largest source of employment in the country. Opening of B2C e-commerce on inventory based model is likely to seriously impact these shopkeepers leading to large scale unemployment.

8. Conclusion and recommendations:

8.1 Overall, e-commerce including online retail in India constitutes a small fraction of total sales, but is set to grow to a substantial amount owing to a lot of factors such as rising disposable incomes, rapid urbanization, increasing adoption and penetration of technology such as the internet and mobiles, rising youth population as well as increasing cost of running offline stores across the country.

8.2 This discussion paper is put out to seek the views of relevant stakeholders on the following issues in suggested format:

Sl. No.	Question	Pros	Cons
i.	Should FDI be allowed in B2C e-commerce?		
ii.	Should it be open for all products or only for non-food products?		
iii.	Should a limit for minimum capitalization be laid down?		
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?		
v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?		
vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?		
vii.	What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)		
viii.	What should B2C e-commerce encompass- -Goods -Services -Intellectual Property		

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Subject:-Discussion paper on e-commerce in India - seeking comments/views

The Department of Industrial Policy and Promotion has prepared a Discussion Paper on e-commerce in India. The discussion paper has been prepared on the following aspects:-

(i) Introduction
(ii) Status of the global e-commerce industry
(iii) E-commerce in emerging economies
(iv) Status of e-commerce in India
(v) Existing regulations on e-commerce in the country
(vi) FDI in B2C e-commerce
(vii) Advantages and disadvantages of FDI in B2C e-commerce
(viii) Conclusion and recommendations.

2. The Discussion Paper is available on this Department's website at http://dipp.nic.in/English/Discuss_paper/Discussion_paper_ecommerce_07012014.pdf.

3. It is requested that comments/views/suggestions on the discussion paper may kindly be forwarded to this Department **latest by 30th January, 2014**. The comments may be sent to the undersigned and/or emailed at ahmed.i@nic.in.

(Ishtiyaque Ahmed)
Director,
Department of Industrial Policy & Promotion
M/o Commerce & Industry
Udyog Bhawan, New Delhi
Email: ahmed.i@nic.in

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Date: January 28, 2014

To
Shri. Ishtiyaque Ahmed
Director,
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.

Subject: Feedback on the discussion paper by DIPP – Indian E-commerce industry

Dear Sir,

Retailers Association of India (RAI) is the unified voice of Indian retailers, working with all the stakeholders for creating the right environment for the growth of the modern retail industry in India. RAI, is the body that encourages, develops, facilitates and supports retailers to become modern and adopt best practices that will delight customers. RAI has a three charter aim of Retail Development, Facilitation and Propagation and conducts various programs aimed at the betterment of employees in the sector.

RAI welcomes the Government's decision to initiate discussion on allowing FDI in B2C e-commerce. Opening of FDI in B2C e-commerce will not only empower consumers, but will broaden the reach of modern retail to tier II and tier III cities and provide them with global expertise, technology and finance. By broadening the scope of foreign investments in e-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

It has been observed that the flourishing e-commerce has provided impetus to the growth of SMEs, manufacturers and service providers. However, due to lack of technological expertise and financial constraints, growth of e-commerce in India has not been as good as other developing countries. FDI in B2C e-commerce will provide for this much needed technology and finance to develop back-end infrastructure and encourage transparency and inclusive growth.

111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai – 400099
Tel: +91 22 28269527 – 29 Fax: +91 22 28269536 Email: info@rai.net.in Website: www.rai.net.in

Please find our views on DIPP's discussion paper on FDI in B2C e-commerce in India as follows:

S. No.	Question	Pros	Cons
I	**Should FDI be allowed in B2C e- commerce?**	YES FDI in B2C e-commerce will: • Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. • Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). • Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. • Contribute in building for a more equitable society and inclusive growth as the rural consumer will be able to access similar products like its urban counterparts. • Create transparency in financial transactions.	It may negatively affect business of small neighbourhood stores. However, limiting FDI to non-food products (as we recommend at this juncture), would mitigate any negative impact to the neighbourhood stores.
Ii	**Should it be open for all products or only for non-food products?**	At this juncture, it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	**Should a limit for minimum capitalization be laid down?**	• For majority Single Brand foreign investment e-commerce and minority foreign investment in single and multi-brand, US$25 million	

		should be the minimum capitalization • For Multi-brand e-commerce, US$50 million can be imposed as minimum capitalization. • A period of 3 years may be allowed for infusion of equity into India by the foreign investors.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	• For a majority foreign investment, 30 % SME sourcing can be made mandatory. • For minority foreign investment, 20 % SME sourcing can be made mandatory. • It should not be made mandatory to source from a defined SME sector	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open front-end stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	Foreign investment should be restricted to 49 % initially under the automatic route. It may then be gradually increased to 100 %.	None
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. Moreover, it will help in rupee appreciation and thinning current	None

	lower price to customers, higher price to producers/manufacturers, ease of operations etc.	account deficit. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) The e-tailing model does not follow the traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40	

111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai - 400099
Tel: +91 22 28269527 - 29 Fax: +91 22 28269536 Email: info@rai.net.in Website: www.rai.net.in

		percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	**What should B2C E-commerce encompass-** **-Goods** **-Services** **-Intellectual Property**	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

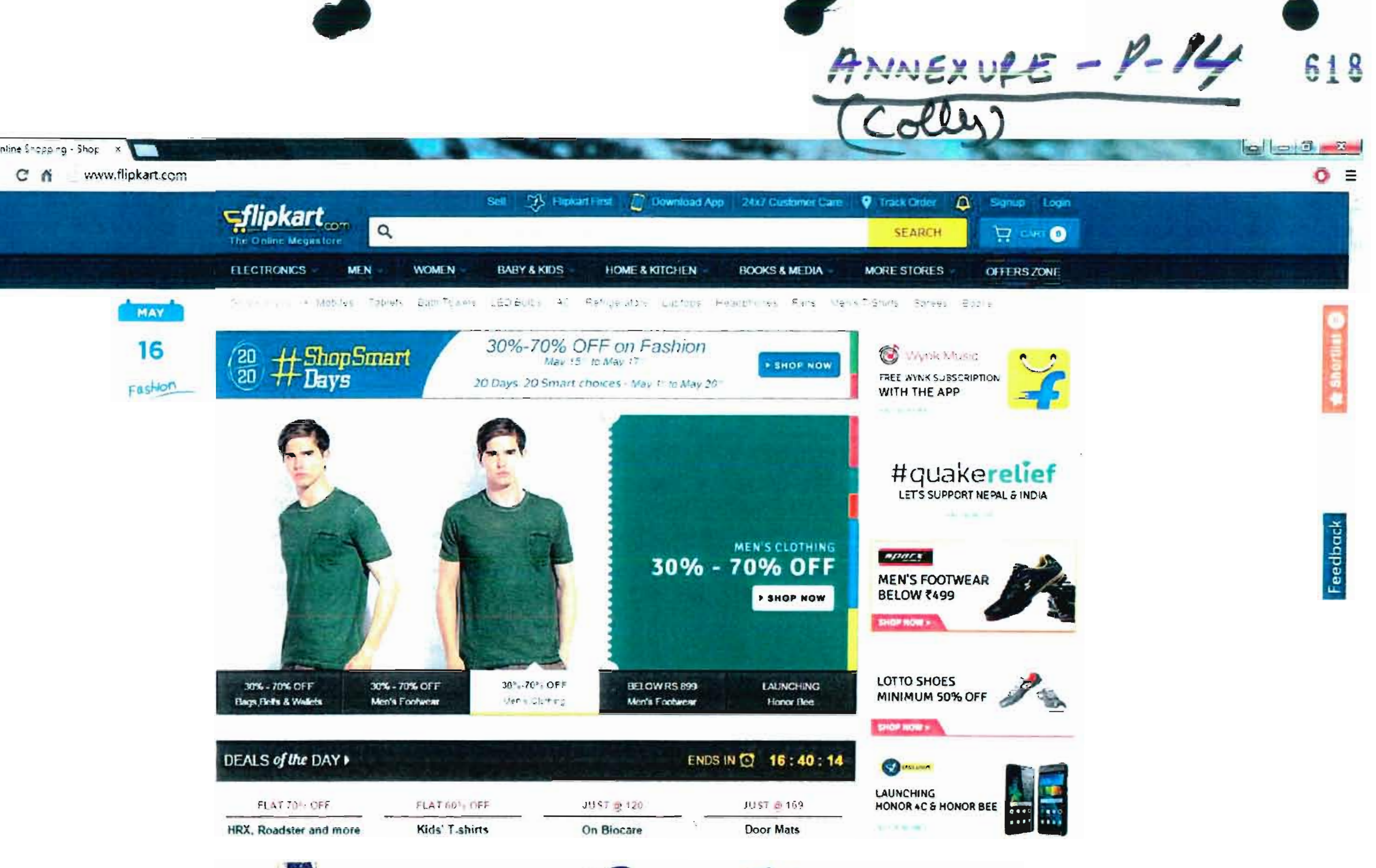
We hope you will receive our views favorably and acknowledge the same.

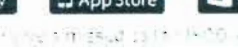
Yours sincerely,

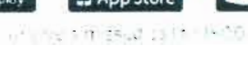
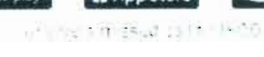
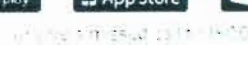
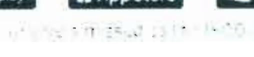
For Retailers Association of India

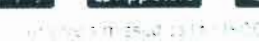
Gautam Jain
Head – Advocacy & Finance

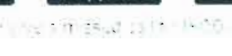
ANNEXURE - P-14 (Colly)

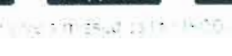


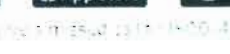


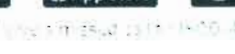
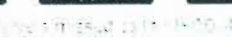





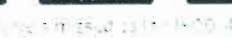
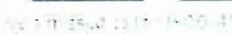


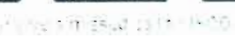


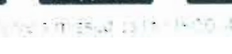


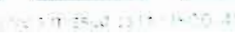
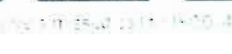


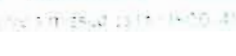



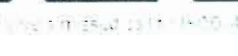
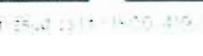
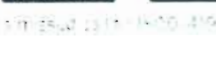
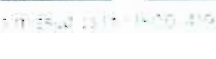
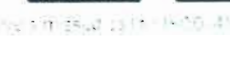



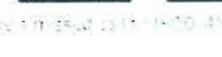


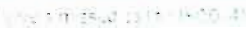


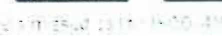



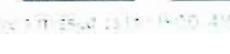


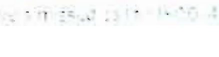






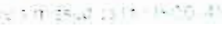


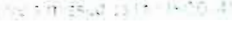


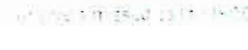


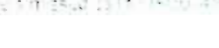
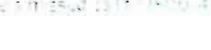










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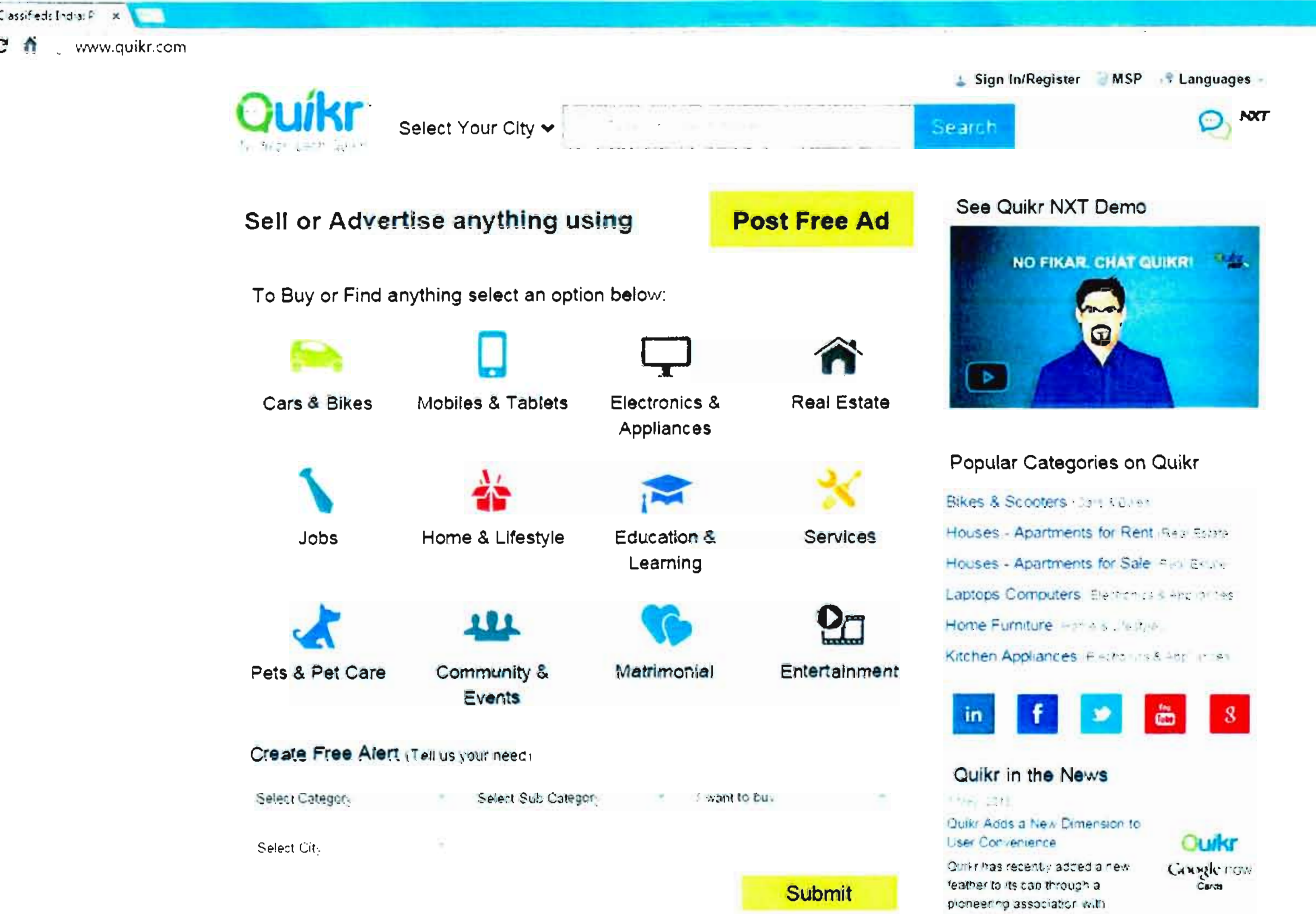
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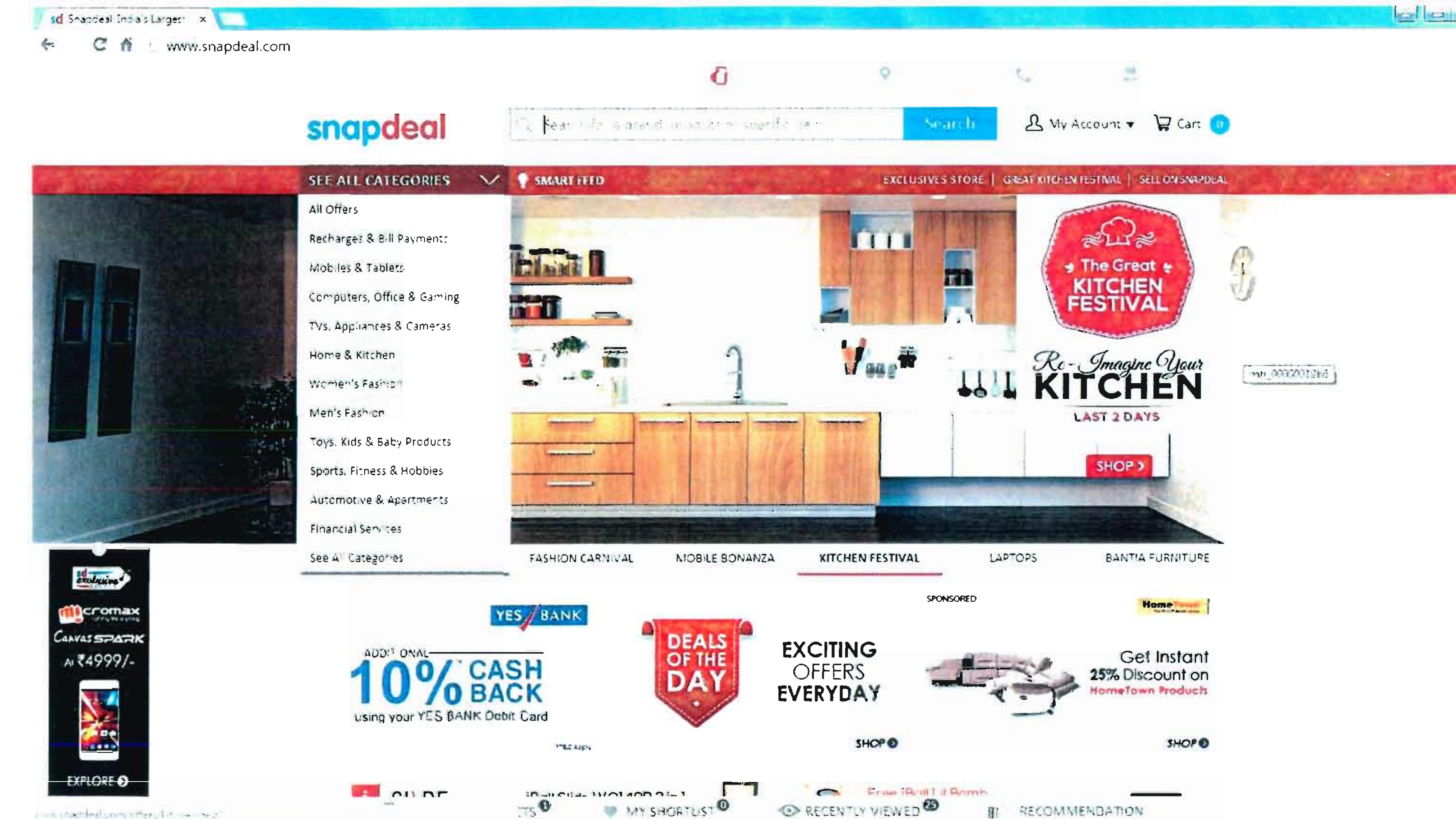

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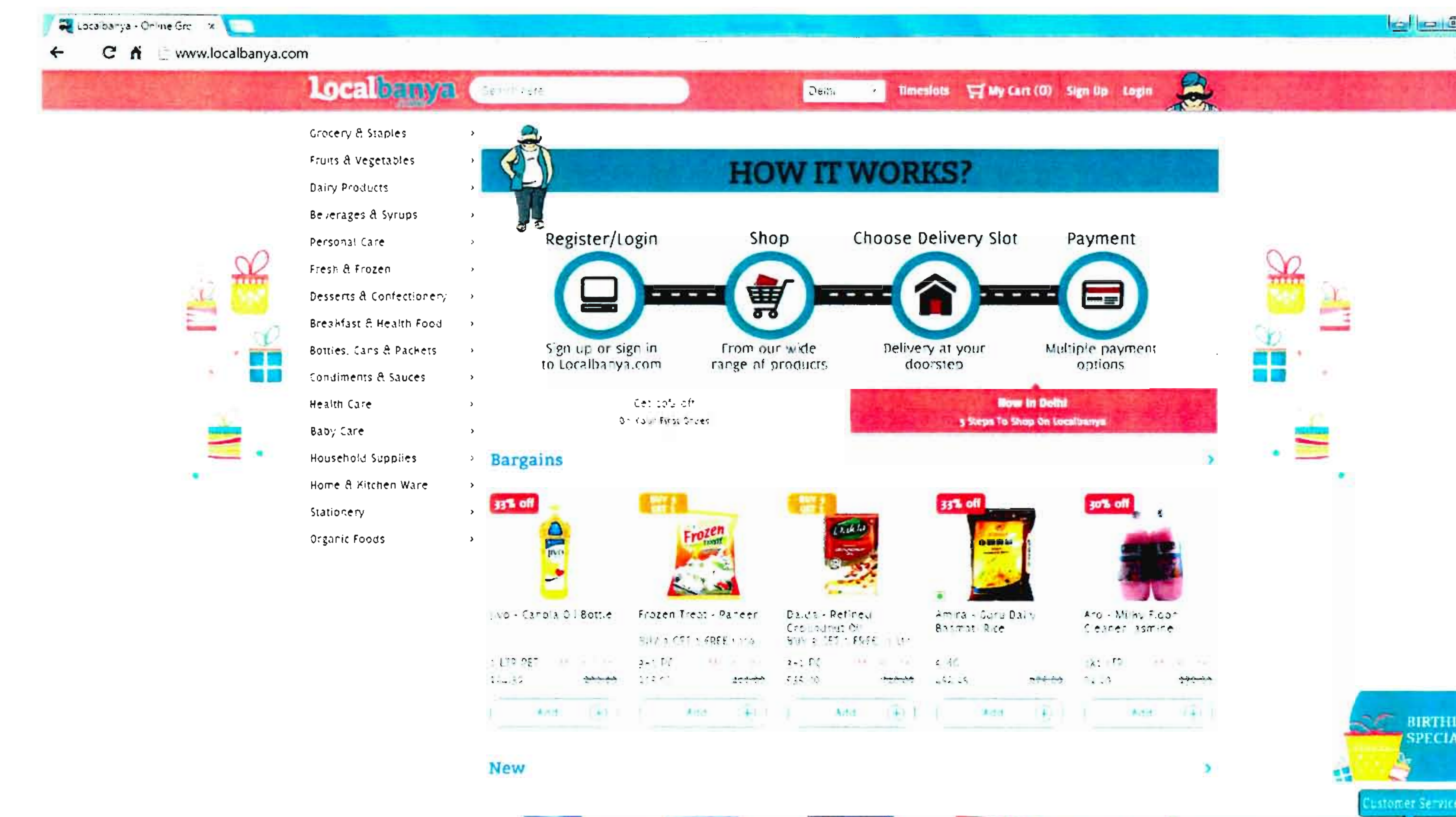
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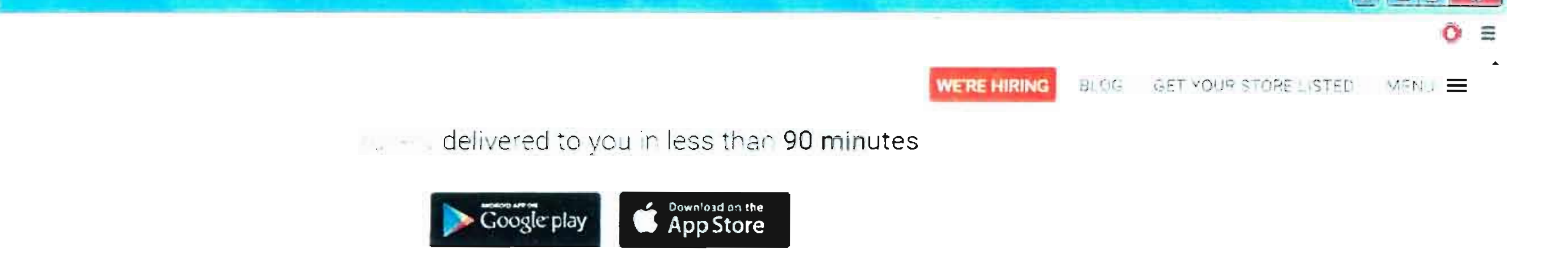

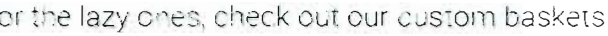

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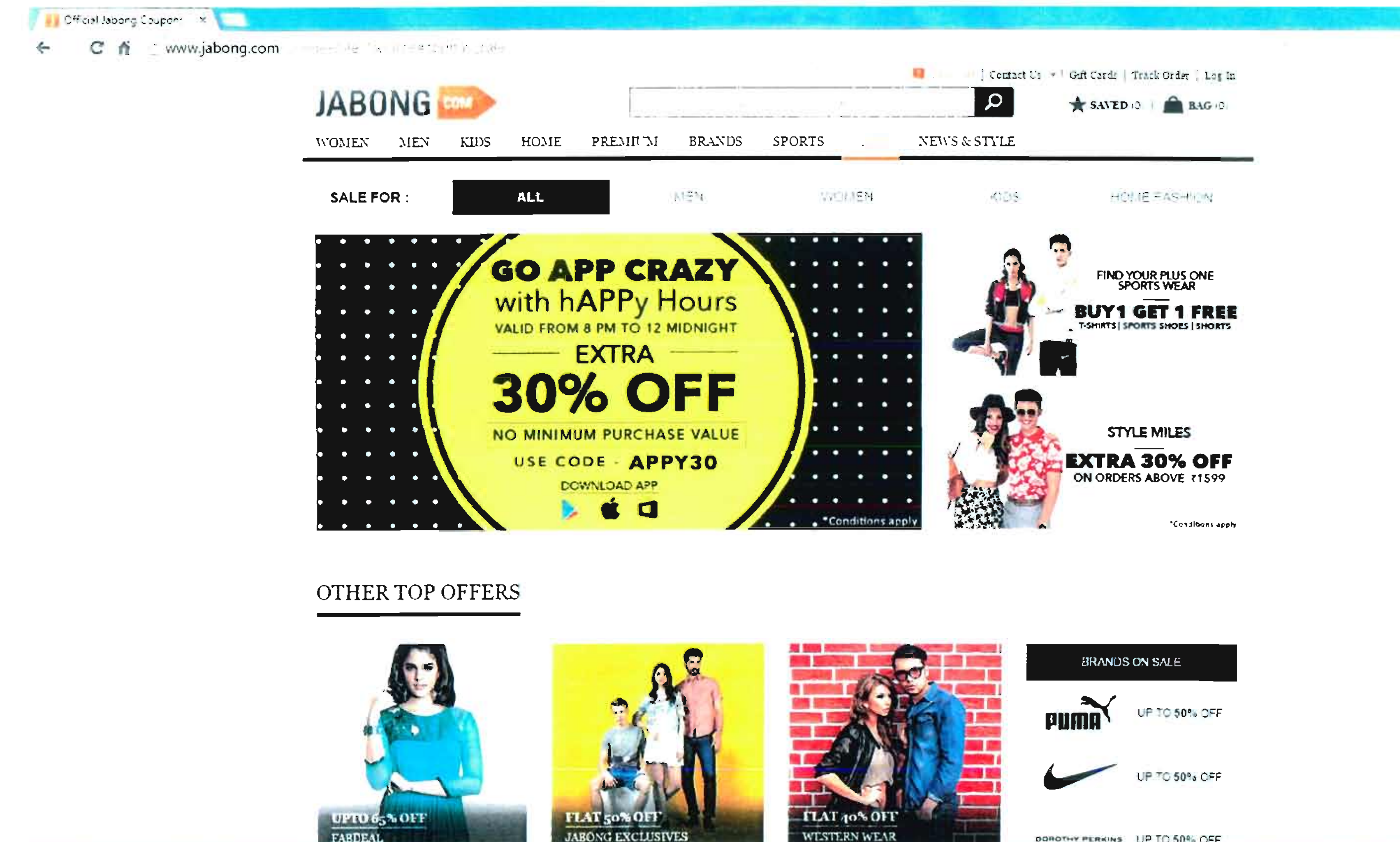

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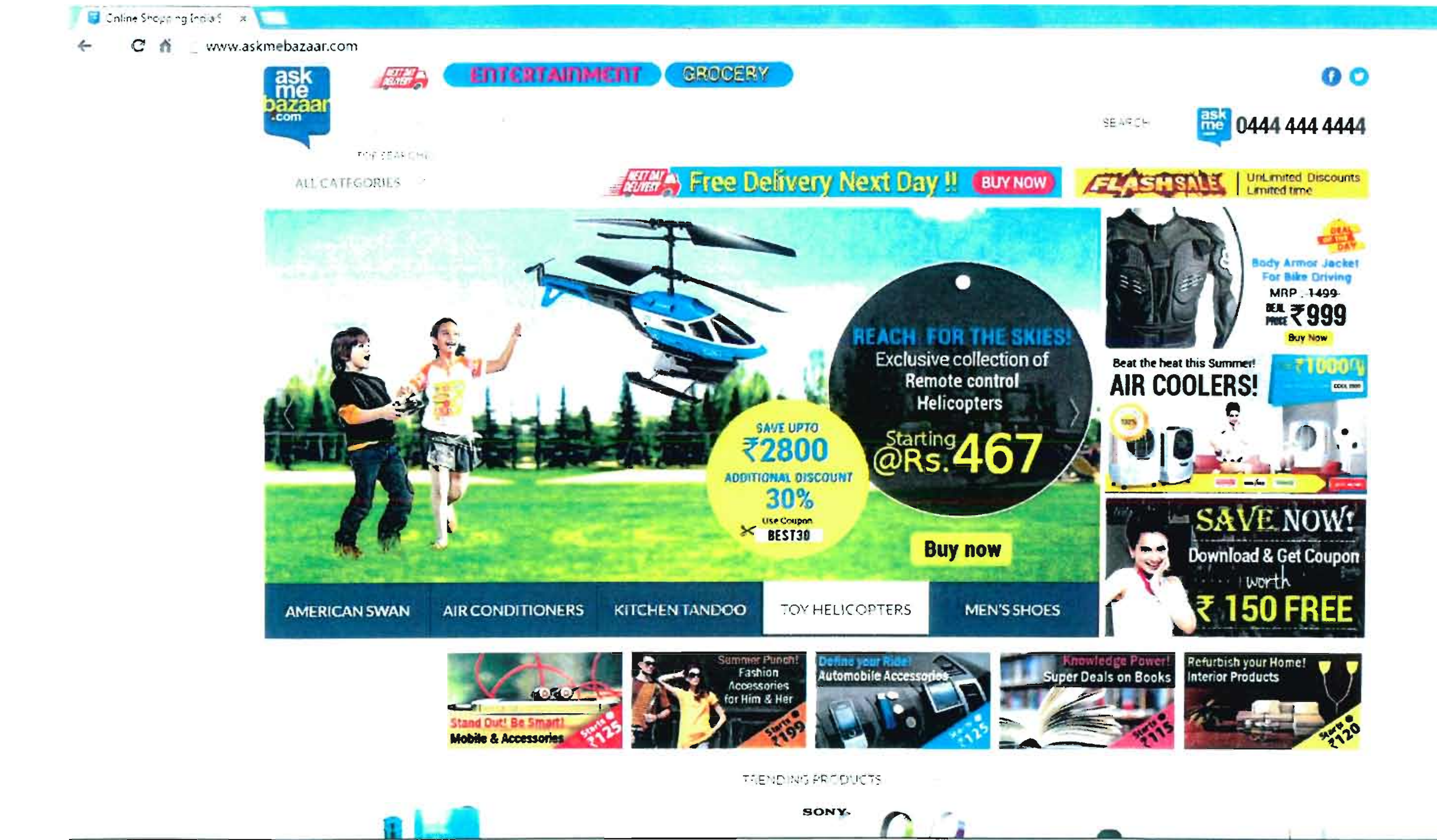

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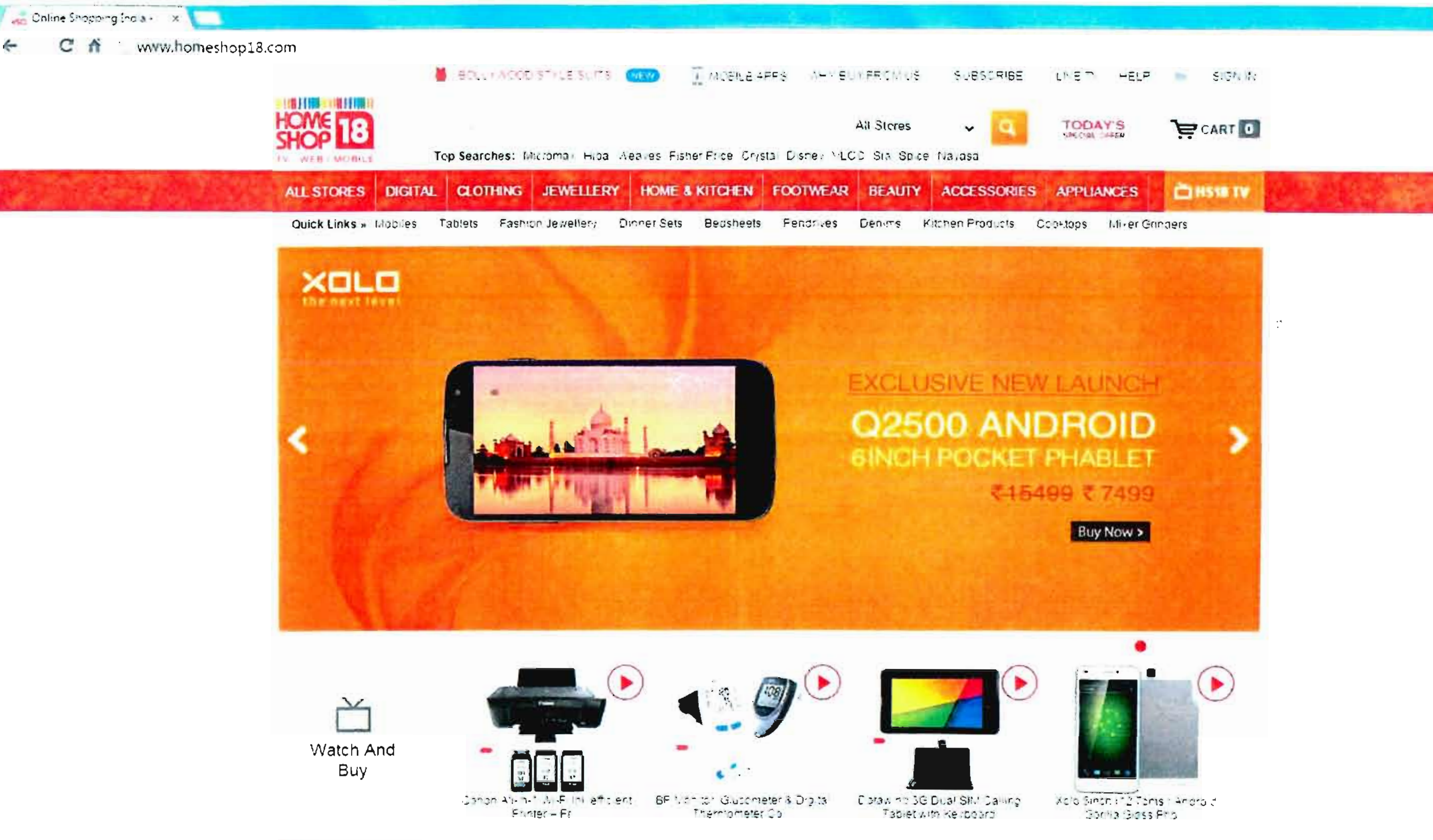
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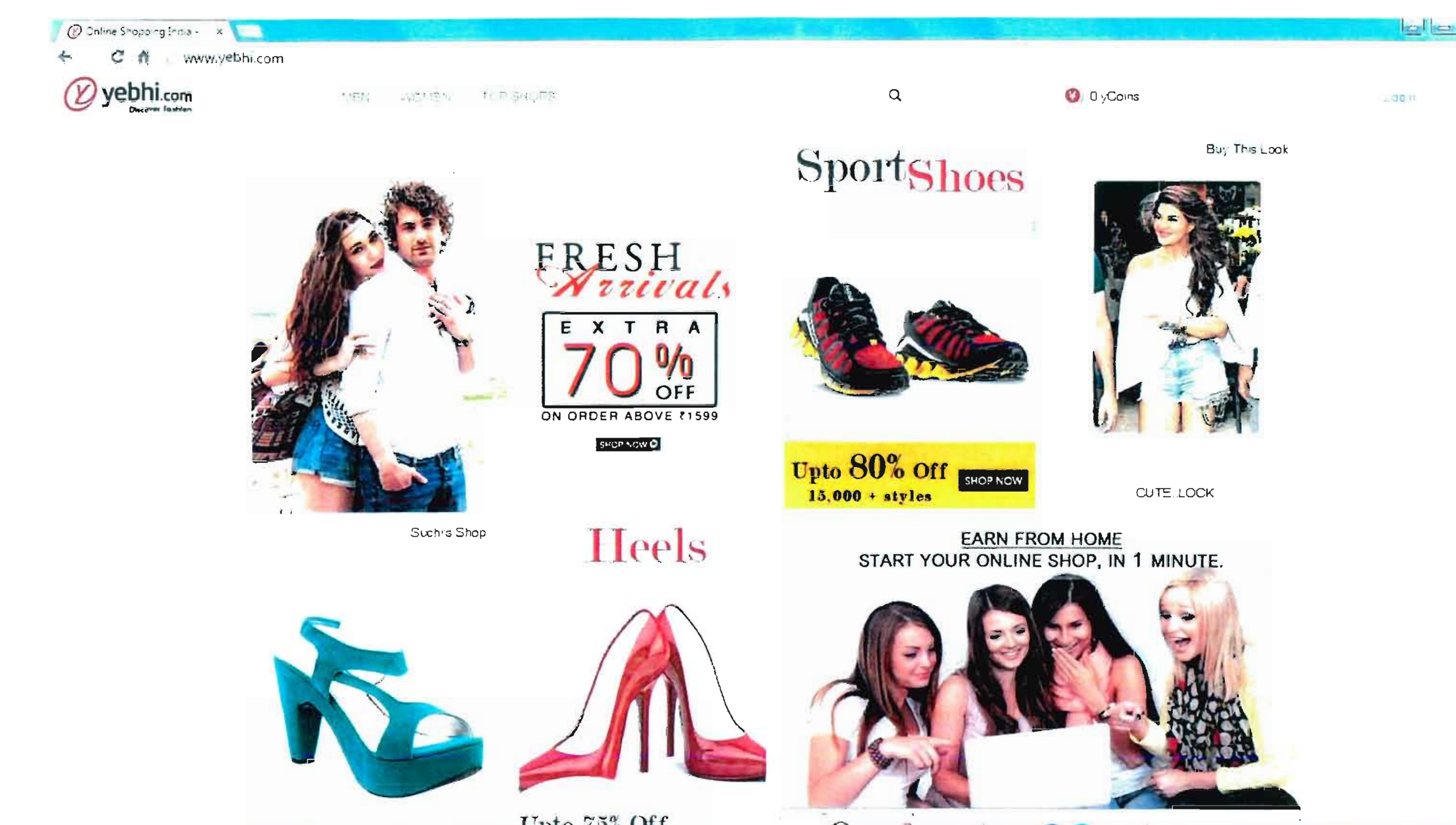
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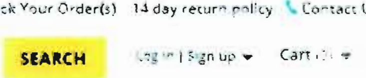

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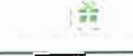

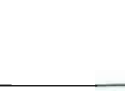

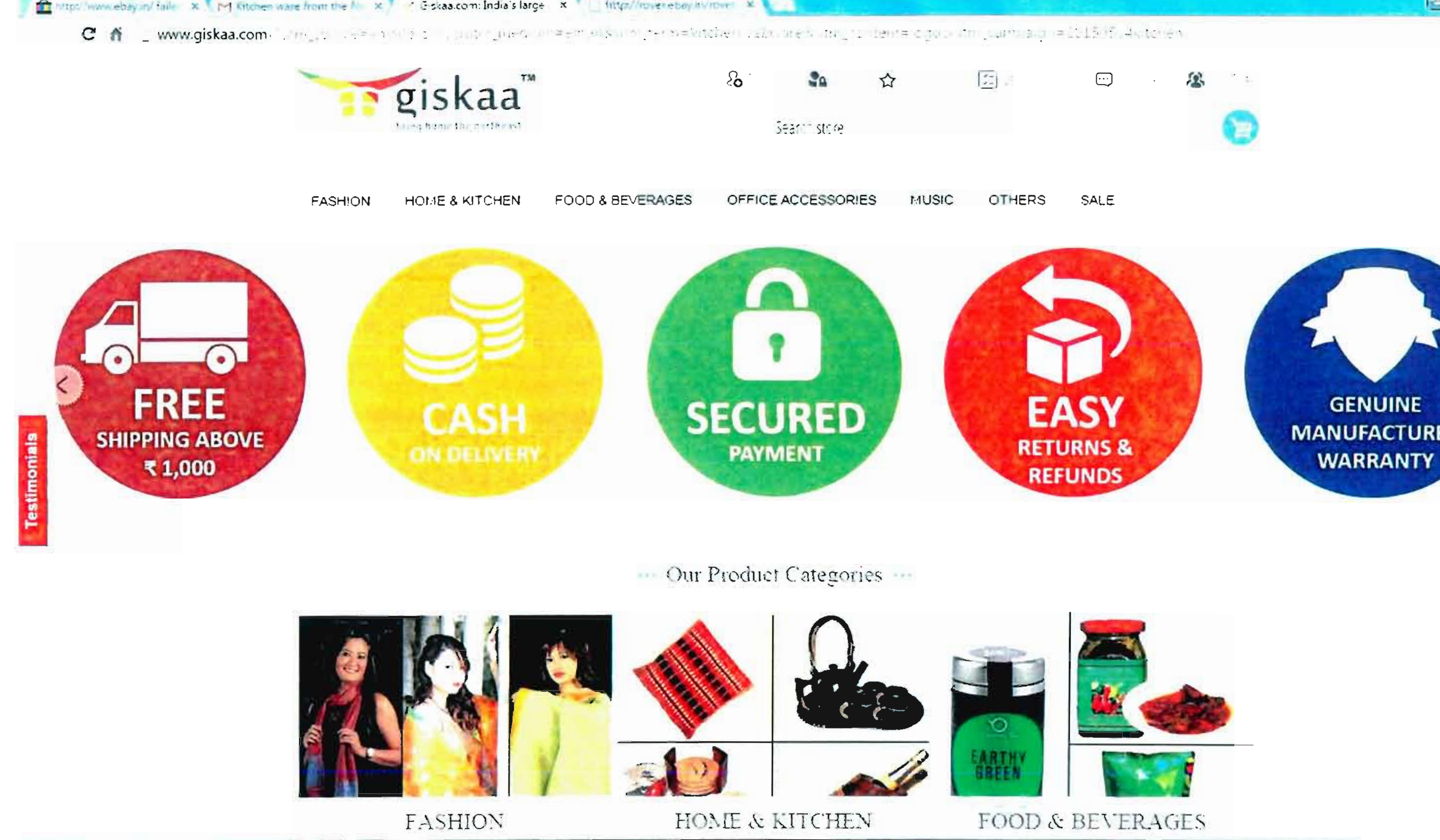
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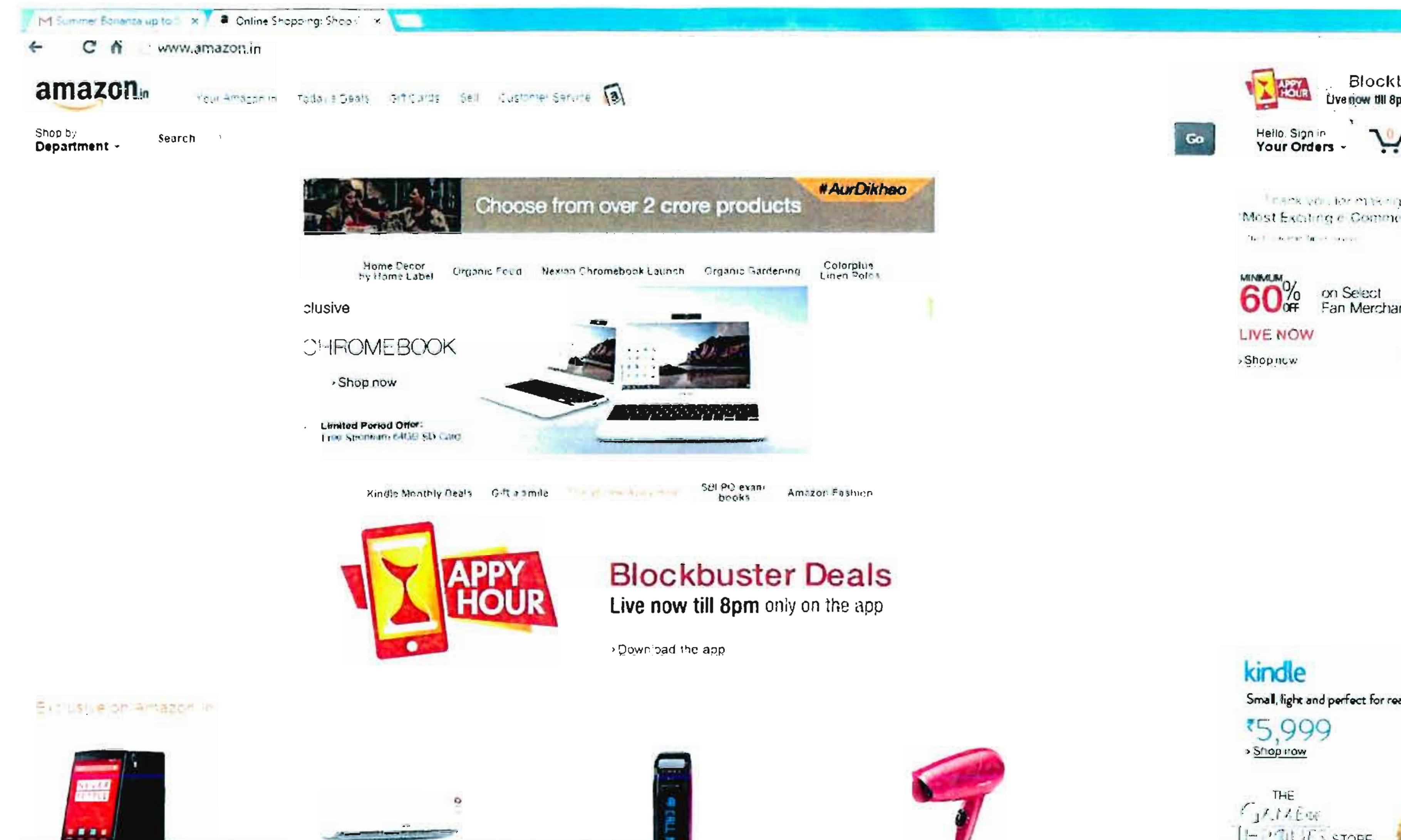

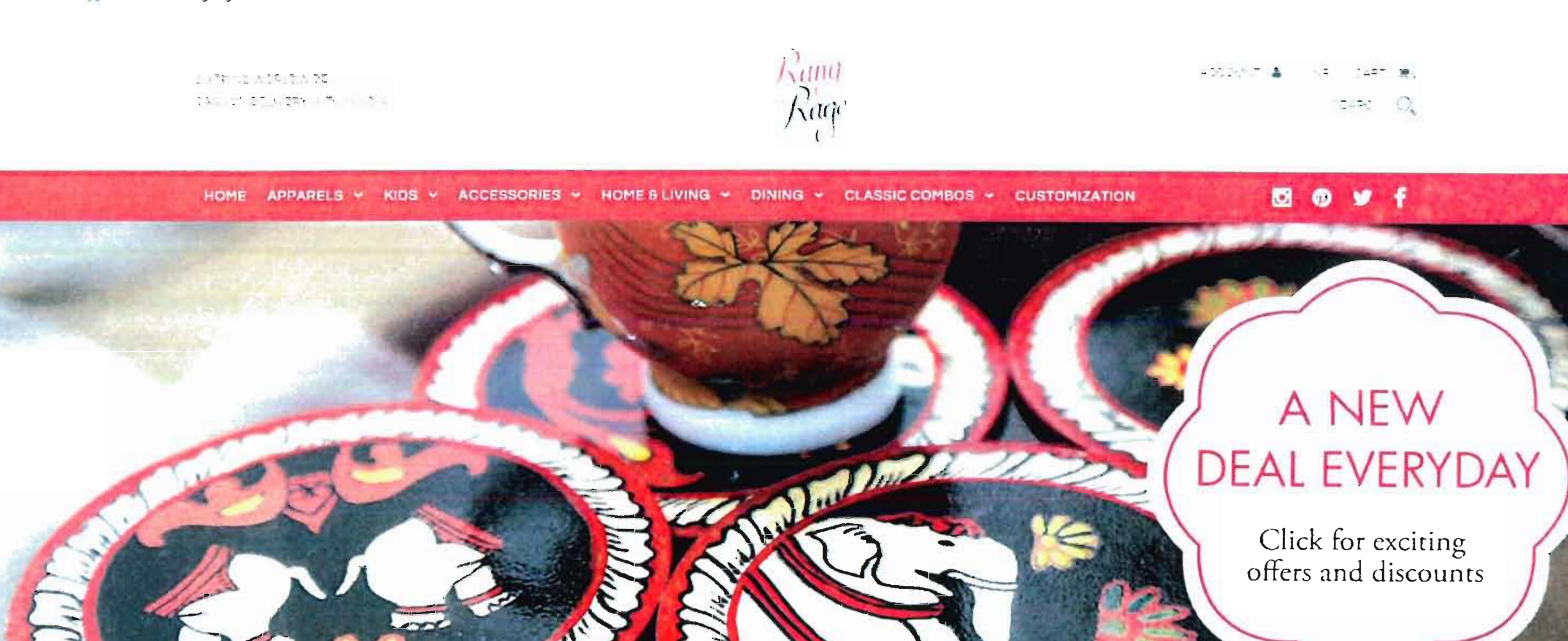

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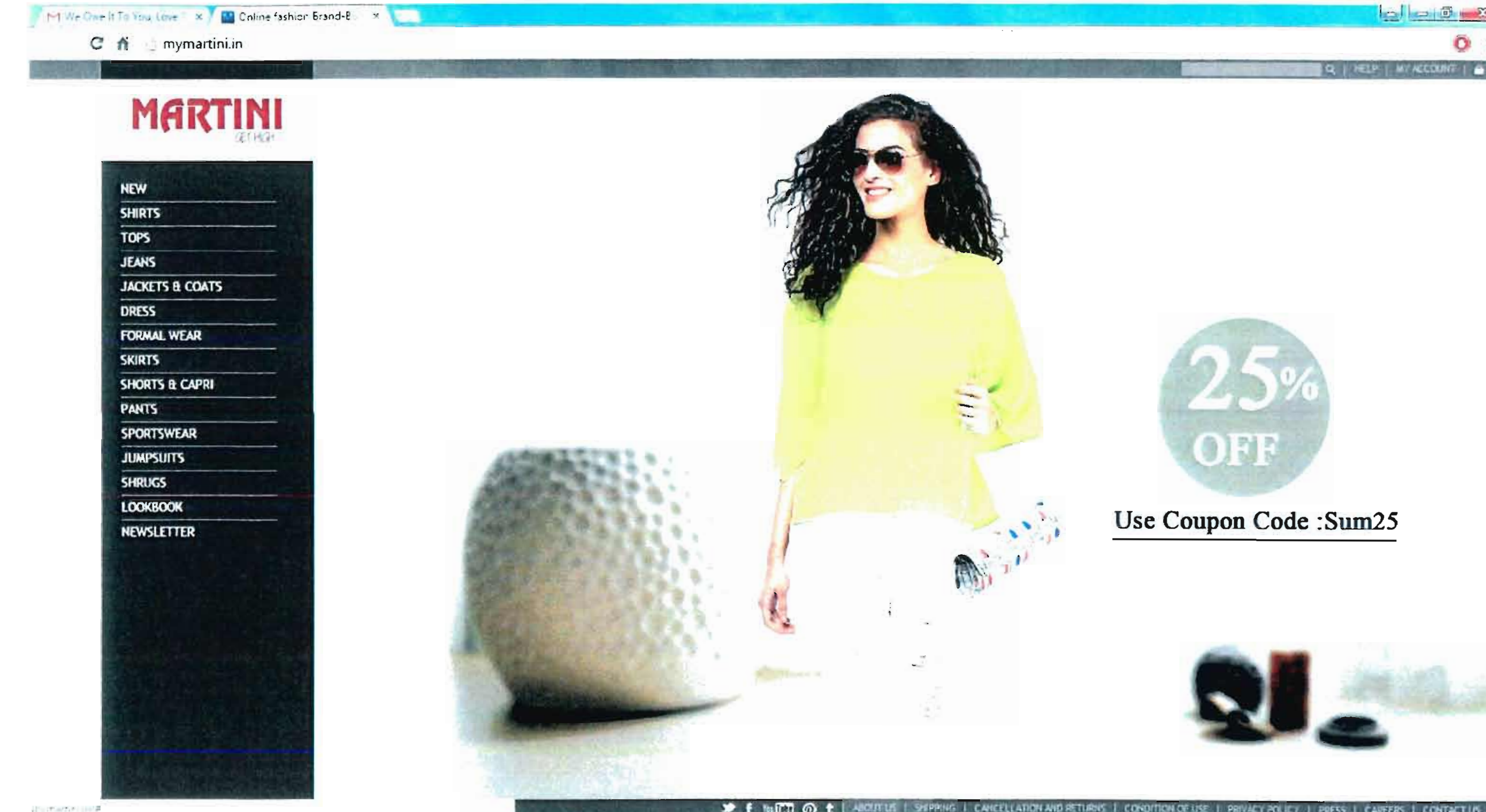
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ANNEXURE - P-15

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RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2014-15/10
Master Circular No. 6 /2014-15

July 1, 2014
(Updated as on November 21, 2014)

To,

All Authorised Persons in Foreign Exchange

Madam / Sir,

Master Circular on Miscellaneous Remittances from India – Facilities for Residents

Miscellaneous remittance facilities for residents are allowed in terms of section 5 of the Foreign Exchange Management Act, 1999, read with Government of India Notification No. G.S.R 381(E) dated May 3, 2000, as amended from time to time.

2. This Master Circular consolidates the existing instructions on the subject of **"Miscellaneous Remittances from India - Facilities for Residents"** at one place. The list of underlying circulars/notifications consolidated in this Master Circular is furnished in Appendix-1.

3. This Master Circular is being updated from time to time as and when the fresh instructions are issued. The date up to which the Master Circular has been updated is suitably indicated.

4. This Master Circular may be referred to for general guidance. The Authorised Persons and the Authorised Dealer Category – I banks may refer to respective circulars/ notifications for detailed information, if so needed.

Yours faithfully,

(B.P. Kanungo)
Principal Chief General Manager

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Release of Foreign Exchange by Authorised Dealers

A.1 General

1.1 For release of foreign exchange to persons resident in India for various current account transactions, Authorised Dealer banks are to be guided by the Rules made by the Government of India under Section 5 of the Foreign Exchange [1A] Management Act, 1999 **(as indicated in item 1 of Appendix 2)** which are detailed in the Foreign Exchange Management (Current Account Transactions) Rules, 2000 (hereinafter referred to as the Rules) notified by the Government of India vide Notification No. G.S.R.381 (E) dated 3rd May 2000 (Annex-1) -. In terms of the said Rules, drawal of foreign exchange for certain categories of transactions as listed in Schedule I is expressly prohibited. Exchange facilities for transactions included in Schedule II to the Rules may be permitted by the Authorised Dealer banks provided the applicant has secured the approval from the Ministry/Department of the Government of India as specified therein. In respect of transactions included in Schedule III, prior approval of the Reserve Bank would be required for remittance exceeding the specified limits. The release of foreign exchange up to the threshold ceilings specified in Schedule III stands delegated to the Authorised Dealer banks. All applications for release of foreign exchange exceeding the limits as prescribed in Schedule III to the Rules should be referred to the Regional Office concerned of the Foreign Exchange Department of the Reserve Bank, under whose jurisdiction the applicant is functioning / residing.

[1]1.2 "Drawal" of foreign exchange also includes use of International Credit Cards (ICC), International Debit Cards (IDC), ATM cards, etc. [2] "Currency", *interalia*, includes ICC, IDC and ATM Cards. Accordingly, all Rules, Regulations made and Directions issued under the Act apply to the use of ICC, IDC and ATM Cards.

1.3 In order to provide adequate foreign exchange facilities and efficient customer service, the Reserve Bank has decided to grant licences to certain entities by authorising them as Authorised Dealer – Category II to undertake a range of non- [2A] trade current account transactions. Accordingly, Authorised Dealer – Category II are authorised to release / remit foreign exchange for the following non-trade current account transactions:

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[1] Para 2 (d) of FEMCAT Rules
[1A] appendix 2 of this Master Circular
[2] Section 2(h) of FEMA 1999

(a) Private visits,

(b) Remittance by tour operators / travel agents to overseas agents / principals / hotels,

(c) Business travel,

(d) Fee for participation in global conferences and specialized training,

(e) Remittance for participation in international events / competitions (towards training, sponsorship and prize money),

(f) Film shooting,

(g) Medical treatment abroad,

(h) Disbursement of crew wages,

(i) Overseas education,

(j) Remittance under educational tie up arrangements with universities abroad,

(k) Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL, etc.

(l) Employment and processing, assessment fees for overseas job applications,

(m) Emigration and emigration consultancy fees,

(n) Skills / credential assessment fees for intending migrants,

(o) Visa fees,

(p) Processing fees for registration of documents as required by the Portuguese / other Governments,

(q) registration / subscription / membership fees to International Organisations.

1.4 Release of foreign exchange is not admissible for travel to and transaction with residents of Nepal and Bhutan. (cf. Clause (b) of Rule 3 of the Rules ***(as indicated in item 2 of Appendix[3]).***

[2A] AP DIR 25 dated. March 6, 2006
[3] Appendix 2 on page 46

A.2 Sale of Exchange

[3A]2.1 Authorised Persons may release foreign exchange for **travel purposes** on the basis of a declaration given by the traveller regarding the amount of foreign exchange availed of during the financial year.

[3B] 2.2 In case of issue of travellers cheques, the traveller should sign the cheques in the presence of an authorised official and the purchaser's acknowledgement for receipt of the travellers cheques should be held on record.

2.3 [4]Out of the overall foreign exchange being sold to a traveller, exchange in the form of foreign currency notes and coins may be sold up to the limit indicated below:

(i) Travellers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States - not exceeding USD 3000 or its equivalent.

(ii) Travellers proceeding to Iraq or Libya - not exceeding USD 5000 or its equivalent

(iii) Travellers proceeding to Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States - full exchange may be released.

[5](iv) Travellers proceeding for Haj/Umrah pilgrimage- full amount of BTQ entitlement in cash or up to the cash limit as specified by the Haj Committee of India, may be released.

2.4 [4A] The form A2 relating to sale of foreign exchange should be retained for a period of one year by the Authorised Persons, together with the related documents, for the purpose of verification by their Internal Auditors. [6]However, in respect of remittance applications for miscellaneous non-trade current account transactions of amount not exceeding USD 25,000, Authorised Dealers may obtain **simplified Application-cum-Declaration** form (Form A2) as shown at **Annex -2.**

[3A] AP DIR 12 dated November 23, 2001
[3B] para A2 (c) of Annex to AP DIR 19 dated October. 30, 2000
[4] AP DIR 50 dated May 4, 2010
[4A] para A.2 (e) of Annex to AP DIR 19 dated Oct. 30, 2000
[5] A.P. Dir 40 dated November 21, 2014
[6] AP DIR 118 dated May 7, 2012

2.5 In cases where the remittances are allowed on the basis of self declaration, the onus of furnishing the correct details in the application will remain with the applicant who has certified the details relating to the purpose of such remittance.

A.3 Medical Treatment

[7]3.1 With a view to enable residents to avail of foreign exchange for medical treatment abroad without any hassles and any loss of time, Authorised Dealers may release foreign exchange up to an amount of USD 100,000 or its equivalent, on the [8] basis of self declaration that the applicant is buying exchange for medical treatment outside India, without insisting on any estimate from a hospital/doctor.

[7A] 3.2 For amount exceeding the above limit, estimate from the doctor in India or hospital/ doctor abroad, is required to be submitted to the Authorised Dealers.

[7B] 3.3 A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer for medical treatment outside India.

A.4 Cultural Tours

[9]Dance troupes, artistes, etc., who wish to undertake tours abroad for cultural purposes should apply to the Ministry of Human Resources Development (Department of Education and Culture), Government of India, for their foreign exchange requirements. Authorised Dealers may release foreign exchange, on the strength of the sanction from the Ministry concerned, to the extent and subject to conditions indicated therein.

A.5 Private Visits

[10]Foreign exchange for private visit can also be released to a person who is availing of foreign exchange for travel outside India for any purpose up to the limits specified in Schedule III to the Rules.

A.6 Business Visits

[11]Foreign exchange may be released for undertaking business travel or attending a conference or specialised training or for maintenance expenses of a patient going

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[7] A.P DIR.3 dated July 17, 2003
[8] AP DIR 17 dated September 12, 2002, FEM CAT
[7A] item 9 of Schedule III of FEM CAT
[7B] para. A.3 of Annex to AP DIR 19 dated October.30, 2000
[9] Entry 1 Schedule II FEM CAT
[10] Entry 2 Schedule III FEM CAT
[11] Schedule III of FEM CAT

abroad for medical treatment or check up abroad or for accompanying as attendant to a patient going abroad for medical treatment / check up to the limits specified in Schedule III to the Rules.

A.7 Period of surrender of foreign exchange

[12]7.1 In case the foreign exchange purchased for a specific purpose is not utilized for that purpose, it could be utilized for any other eligible purpose for which drawal of foreign exchange is permitted under the relevant Rules / Regulation.

[13]7.2 General permission is available to any resident individual to surrender received / realised / unspent / unused foreign exchange to an Authorised Person within a period of 180 days from the date of receipt / realisation / purchase / acquisition / date of return of the traveller, as the case may be.

[14]7.3 The liberalized uniform time limit of 180 days is applicable only to resident individuals and in areas other than export of goods and services.

[15]7.4 In all other cases, the regulations / directions on surrender requirement shall remain unchanged. (cf. Notification No. FEMA 9/2000-RB dated May 3, 2000, as amended from time to time).

A.8 Unspent Foreign Exchange

[16]8.1 As stated above, unspent foreign exchange brought back to India by a resident individual should be surrendered to an Authorised Person within 180 days from the date of return of the traveller. Exchange so brought back can be utilized by the individual for his/her subsequent visit abroad.

8.2 However, a returning traveller is permitted to retain with him, foreign currency travellers cheques and currency notes up to an aggregate amount of USD 2000 and foreign coins without any ceiling beyond 180 days. (cf. **Notification No. FEMA 11/2000-RB dated May 3, 2000**). Foreign exchange so retained, can be utilized by the traveller for his subsequent visit abroad.

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[12] Para 2 of AP DIR. 58 May 18, 2007
[13] Regulation 6A of FEMA 9
[14] Para 2 of AP DIR. 58 May 18, 2007
[15] Para 2 of AP DIR. 58 May 18, 2007
[16] Regulation 6A of FEMA 9

[17]8.3 A person resident in India can open, hold and maintain with an Authorised Dealer in India, a **Resident Foreign Currency (Domestic) Account**, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India.

8.4 The account may also be opened/ credited with foreign exchange earned abroad, including proceeds of export of goods and/ or services, royalty, honorarium, etc., and/or gifts received from close relatives (as defined in the Indian Companies Act1956) and repatriated to India through normal banking channels by resident individuals.

[18]8.5 The eligible credits to the Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques, are as under :-

(i) acquired by him from an Authorised Person for travel abroad and represents the unspent amount thereof or

(ii) acquired by him, while on a visit to any place outside India, by way of payment for services not arising from any business in or anything done in India and by way of honorarium or gift or

(iii) acquired by him, from any person not resident in India, and who is on a visit to India, as honorarium, gift, for services rendered or in settlement of any lawful obligation.

[17A] **Note**: *Where a person approaches an Authorised Person for surrender of unspent/ unutilized foreign exchange after the prescribed period of 180 days, Authorised Person should not refuse to purchase the foreign exchange merely on the ground that the prescribed period has expired.*

[17] Regulation 5A of FEMA 10
[18] Regulation 5A of FEMA 10

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A.9 Remittances for Tour Arrangements, etc.

[17B] 9.1 Authorised Dealers may remit foreign exchange up to a reasonable limit, at the request of a traveller towards his hotel accommodation, tour arrangements, etc., in the countries proposed to be visited by him or for making other tour arrangements for travellers from India, provided in each case the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the traveller concerned from an Authorised Person (including exchange drawn for private travel abroad), in accordance with the Rules, Regulations and Directions in force.

9.2 Authorised Dealers may effect remittances at the request of agents in India who have tie-up arrangements with hotels/ agents, etc., abroad for prov ding hotel accommodation or making other tour arrangements for travel from India, provided the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the traveller concerned from an Authorised Person (including exchange drawn for private travel abroad) in accordance with the Rules, Regulations and Directions in force.

9.3 Authorised Dealer may open foreign currency accounts in the name of agents in India who have tie up arrangements with hotels/ agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travellers from India provided:-

a) the credits to the account are by way of depositing
   i) collections made in foreign exchange from travellers; and
   ii) refunds received from outside India on account of cancellation of bookings / tour arrangements, etc., and

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[17A] note to para.A.8 of Annex to AP DIR 19 dated October 30, 2000
[17B] para. A.9 of Annex to AP DIR 19, dated October 30, 2000

b) the debits in foreign exchange are for making payments towards hotel accommodation, tour arrangements, etc., outside India, in accordance with paragraph 9.2 above.

[17C] 9.4 Authorised Dealer may allow tour operators to remit the cost of rail/ road/ water/- transportation charges outside India without any prior approval from the Reserve Bank, net of commission/ mark up due to the agent. The sale of passes/ ticket in India can be made either against the payment in Indian Rupees or in foreign exchange released for visits abroad. The cost of passes/tickets collected in Indian Rupees need not be adjusted in the travellers' entitlement of foreign exchange for private visit.

[17D] 9.5 In respect of consolidated tours arranged by travel agents in India for foreign tourists visiting India and neighbouring countries like Nepal, Bangladesh, Sri Lanka, etc., against advance payments/ reimbursement through an Authorised Dealer, part of the foreign exchange received in India against such consolidated tour arrangement, may require to be remitted from India to these neighbouring countries for services rendered by travel agents and hoteliers in these countries. Authorised Dealer may allow such remittances after verifying that the amount being remitted to the neighbouring countries (inclusive of remittances, if any, already made against the tour) does not exceed the amount actually remitted to India and the country of residence of the beneficiary is not Pakistan.

[17E] A.10 Payment in Rupees

Authorised Dealers may accept payment in cash up to Rs. 50,000 (Rupees fifty thousand only) against sale of foreign exchange for travel abroad (for private visit or for any other purpose). Wherever the sale of foreign exchange exceeds the amount equivalent to Rs.50,000, the payment must be received only by:

(i) a crossed cheque drawn on the applicant's bank account, or

(ii) crossed cheque drawn on the bank account of the firm/ company sponsoring the visit of the applicant, or

[17C] para. 1 of Annex to AP DIR 54 dated November 24, 2002

[17D] para. 2 of Annex to AP DIR 54 dated November 24, 2002

[17E] AP DIR 40 dated December 10, 2008

(iii) Banker's Cheque- /- Pay Order- /- Demand Draft or
(iv) Debit / credit / prepaid cards provided

a) KYC/AML guidelines are complied with

b) sale of foreign currency- /- issue of foreign currency TCs is within the limits (credit- /- prepaid cards) prescribed by the bank and

c) the purchaser of foreign currency- /- foreign currency TCs and the credit/debit/prepaid card holder is one and the same person.

[17F] **Note:** *Where the rupee equivalent of foreign exchange drawn exceeds Rs 50,000 either for any single drawal or more than one drawal reckoned together for a single journey/visit, it should be paid by cheque or draft.*

[19]A.11 Issue of Guarantee – Import of services

With a view to further liberalise the procedure (other than in respect of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments) for import of services, it has been decided to increase the limit for issué of guarantee by AD Category-I Banks from USD 100,000 to USD 500,000.

Accordingly, AD Category-I banks are now permitted to issue guarantee for amount not exceeding USD 500,000 or its equivalent in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, provided:

(a) the AD Category-I bank is satisfied about the bonafides of the transaction;

(b) the AD Category-I bank ensures submission of documentary evidence for import of services in the normal course; and

(c) the guarantee is to secure a direct contractual liability arising out of a contract between a resident and a non-resident.

In the case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments, approval from the Ministry of Finance, Government of India for issue of guarantee for an amount exceeding USD 100,000 (USD One hundred thousand) or its equivalent would be required.

In case of invocation of the guarantee, the Authorised Dealer is required to submit to the Chief General Manager-in-Charge, Foreign Exchange Department, Foreign Investments Division (EPD), Reserve Bank of India, Central Office, Mumbai- 400001 a report on the circumstances leading to the invocation of the guarantee.

[20]A.12 Liberalised Remittance Scheme (LRS) of USD 125,000 for Resident individuals

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[17F] Note to para A 10 of AP DIR 19 dated October 30, 2000
[19] AP DIR 11 October 5, 2009
[20] AP DIR 138 dated June 3, 2014
[19A] AP DIR 90 dated March 6, 2012

12.1 Under the Liberalised Remittance Scheme, (hereinafter referred to as the Scheme) Authorised Dealers may freely allow remittances by resident individuals up to USD 125,000 per financial year (April-March) for any permitted current or capital account transactions or a combination of both.

[19A]12.2 The Scheme is available to all resident individuals including minors. In case of remitter being a minor, the LRS declaration form should be countersigned by the minor's natural guardian.

[19B] 12.3 Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

12.4 Remittances under the Scheme are allowed only in respect of permissible current or capital account transactions or a combination of both. All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the Scheme.

[19D]12.5 Under the Scheme, Resident individuals are free to acquire and hold shares or debt instruments or any other asset [21]including immovable property outside India [22]without prior approval of the Reserve Bank.

12.6 The limit of USD 125,000 under the Scheme also includes remittances towards gift and donation by a resident individual.

[19C]12.7 Remittances under the Scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

12.8 The Scheme can also be used for remittance of funds for acquisition of ESOPs. The Scheme is in addition to acquisition of ESOPs linked to ADR / GDR and acquisition of qualification shares.

[19B] AP DIR 90 dated March 6, 2012
[19C] AP DIR 90 dated March 6, 2012
[19D] AP DIR 24 dated August 14, 2013
[21] AP DIR 5 dated July 17, 2014
[22] AP DIR 19 dated August 11, 2014

12.9 A resident individual is permitted to make a rupee gift/ loan to a NRI /PIO who is a close relative of the resident individual [close relative as defined in Section 6 of the Indian Companies Act, 1956]. The gift/ loan amount should be within the overall limit of USD 125,000 per financial year as permitted under the Liberalised Remittance Scheme (LRS) for a resident individual. It would be the responsibility of the resident donor/lender to ensure that the gift/ loan amount is under the LRS and all the remittances under the LRS during the financial year including the gift/ loan amount have not exceeded the limit prescribed under the LRS. It may be observed that only LRS limit of the remitter would be utilized and gift/loan amount as the case may be would actually be credited to NRO A/c. of NRI/ PIO close relative.

12.10 A resident individual can invest in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes, etc. under this Scheme. Further, the resident can invest in such securities out of the bank account opened abroad under the Scheme (see 12.13).

12.11 An individual who has availed of a loan abroad while as a non-resident can repay the same on return to India under the Scheme as a resident.

12.12 The Scheme can be used for outward remittance in the form of a DD either in the resident individual's own name or in the name of beneficiary with whom he intends putting through the permissible transactions at the time of private visit abroad, against self-declaration of the remitter in the format prescribed.

[19D]12.12A With effect from August 05, 2013, this Scheme, can be used by Resident individuals to set up Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) outside India for bonafides business activities within the limit of USD 125,000 subject to the terms & conditions stipulated in FEMA Notification No.263.

12.13 Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Scheme without prior approval the Reserve Bank. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme.

12.14 Banks should not extend any kind of credit facilities to resident individuals to facilitate remittances under the Scheme.

12.15 The scheme is not available for remittances for any purpose specifically prohibited under Schedule I or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transaction) Rules, 2000.

12.16 The facility is not available for making remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan.

12.17 The Scheme is not available for remittance to countries identified by Financial Action Task Force (FATF) as non-co-operative countries and territories as available on FATF website www.fatf-gafi.org. or as notified by the Reserve Bank.

12.18 For undertaking transactions under the Scheme, resident individuals may use the application-cum-Declaration Form as at **Annex-3 and it is mandatory to have PAN number to make remittances under the Scheme.**

12.19 Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments.

[23]12.20 AD Category – I banks are required to furnish the information on remittances made under this scheme on a monthly basis, on or before the fifth of the following month to which it relates through Online Returns Filing System (ORFS) for which purpose they have been given user ID and password by the Reserve Bank.
Where there is no data to furnish, AD banks are advised to upload 'nil' figures in the ORFS system.

[24]A.13 Documentation

13.1 The Reserve Bank will not, generally, prescribe the documents which should be verified by the Authorised Dealers while releasing foreign exchange. In this connection, attention of authorized dealers is drawn to sub-section (5) of Section 10 of the FEMA, 1999 ***(as indicated in item 3 of Appendix 2)*** which provides that an authorised person shall require any person desiring to transact in foreign exchange to make such a declaration and to give such information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any

[23] A.P Dir 106 dated May 23, 2013

[24] para.8 of Annex.I to AD M A CIR 11 dated May 16, 2000

contravention or evasion of the provisions of the FEMA or any rule, regulation, notification, direction or order issued there under.

13.2 Authorised Dealers are also required to keep on record any information / documentation, on the basis of which the transaction was undertaken, for verification by the Reserve Bank. In case the applicant refuses to comply with any such requirement or makes unsatisfactory compliance therewith, the Authorised Dealer shall refuse, in writing, to undertake the transaction and shall, if he has reasons to believe that any contravention / evasion is contemplated by the person, report the matter to the Reserve Bank.

13.3 Authorised Dealers have specifically been advised that they may release foreign exchange up to USD 100,000 each for employment, emigration, maintenance of close relatives, education and medical treatment abroad without insisting on any supporting documents but on the basis of self-declaration incorporating certain basic details of the transactions and submission of Form A2. In addition, the existing facility of release of exchange by Authorised Persons up to USD 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan) will continue to be available on a self-declaration basis.

[25]A.14 Endorsement on Passport

It is not mandatory for Authorised Dealers to endorse the amount of foreign exchange sold for travel abroad on the passport of the traveller. However, if requested by the traveller, they may record under their stamp, date, signature and details of foreign exchange sold for travel.

A.15 International Credit Cards

[26] 15.1The restrictions contained in Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 will not be applicable for use of International Credit Cards (ICCs) by residents for making payment towards expenses, while on a visit outside India.

15.2 Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase

[25] A.P DIR 20 dated November 16, 2000
[26] AP DIR 53 dated June 27, 2002

of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).

15.3 ICCs cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.

15.4 There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

[27] 15.5 Resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad, as permissible under extant Foreign Exchange Regulations, are free to obtain ICCs issued by overseas banks and other reputed agencies. The charges incurred against the card either in India or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the card holder has a current or savings account. The remittance for this purpose should also be made directly to the card issuing agency abroad, and not to a third party.

15.6 The applicable limit will be the credit limit fixed by the card issuing banks. There is no monetary ceiling fixed by the Reserve Bank for remittances, if any, under this facility.

[23A] 15.7 Use of ICC for payment in foreign exchange in Nepal and Bhutan is not permitted.

A.16 International Debit Cards

[28] 16.1 Banks authorised to deal in foreign exchange are issuing International Debit Cards (IDCs) which can be used by a resident for drawing cash or making payment to a merchant establishment overseas during his visit abroad. It is clarified that IDCs can be used only for permissible current account transactions and the item-wise limits as mentioned in the Schedules to the Rules, as amended from time to time, are equally applicable to payments made through use of these cards.

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[27] AP DIR 103 dated May 21, 2003
[23A] rule 2 (b) read with rule 3 (b) and (c) of FEM CAT
[28] AP DIR 44 dated June14, 2005

16.2 The IDCs cannot be used on internet for purchase of prohibited items like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., i.e. for such items/activities for which drawal of foreign exchange is not permitted.

16.3 The International Banking Divisions/Foreign Exchange Departments of AD banks were required to submit a statement as on December 31, each year in the prescribed proforma, in case the aggregate forex utilization by the IDC holders exceeds USD 100,000 in a calendar year. The requirement of submission of the above statement by the AD banks has been discontinued from the calendar year 2010 onwards.

A.17 Store Value Cards/ Charge Cards/ Smart Cards, etc.

[29]Certain Authorised Dealer banks are also issuing Store Value Card/ Charge Card/ Smart Card to residents traveling on private/business visit abroad which are used for making payments at overseas merchant establishments and also for drawing cash from ATM terminals. No prior permission from the Reserve Bank is required for issue of such cards. However, the use of such cards is limited to permissible current account transactions and subject to the prescribed limits under the Rules, as amended from time to time.

A.18 Redemption of unutilized balance on prepaid travel cards:

As per the practice followed by issuers, resident Indians who purchase their travel cards, are permitted refund of the unutilized foreign exchange balance only after 10 days from the date of last transaction and accordingly, this condition is stated in the "user guide". Since these cards are expected to act as substitutes for cash/ Travellers Cheques, the facilities available to the user will have to be similar. Accordingly, all such Authorised Persons shall redeem the unutilized balance outstanding in the cards immediately upon request by the resident Indians to whom the cards are issued subject to retention of: -

a) The amounts that are authorized and remain unclaimed/ not settled by the acquirers as of the date of redemption till the completion of the respective settlement cycle;

[29] AP DIR 44 dated June 14, 2005

b) A small balance not exceeding US$ 100, for meeting any pipeline transactions till the completion of the respective settlement cycle; and

c) Transaction fees / service tax payable in India in Rupees.

d) For the amount that are authorized but unclaimed/ not settled by the acquirer, the issuer of such cards can hold such amounts until such transactions are processed/ settled by the acquirers within the prescribed settlement timeframe.

A.19 Acquisition of foreign securities under Employees Stock Option (ESOP)

[30]Resident individuals who are either employees or director of an Indian office or branch of a foreign company in which foreign holding is not less than 51 per cent are permitted to acquire foreign securities under ESOP Scheme without any monetary limit. They are also permitted to freely sell the shares provided the proceeds thereof are repatriated to India.

A.20 Income- tax clearance

Remittances to non-residents will be allowed to be made by the Authorised Dealers on production of an undertaking by the remitter and a Certificate from a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India.

A.21 Facility to grant loan to NRI/ PIO close relative under Liberalised Remittance Scheme (LRS):

Resident individual is permitted to lend to a Non-resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque/ electronic transfer subject to the following conditions:

(i) the loan is free of interest and the minimum maturity of the loan is one year;

(ii) the loan amount should be within the overall limit under the Liberalised Remittance Scheme of USD 125,000 per financial year available for a resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalised Remittance Scheme limit of USD 125,000 during the financial year;

[30] AP DIR 86 dated April 17, 2004

(iii) the loan shall be utilized for meeting the borrower's personal requirements or for his own business purposes in India.

(iv) the loan shall not be utilized, either singly or in association with other person for any of the activities in which investment by persons resident outside India is prohibited, namely:

a. The business of chit fund, or
b. Nidhi Company, or
c. Agricultural or plantation activities or in real estate business, or construction of farm houses, or
d. trading in Transferable Development Rights (TDRs).

Explanation: For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

(v) the loan amount should be credited to the NRO a/c of the NRI / PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;

(vi) the loan amount shall not be remitted outside India; and

(vii) repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

Annex-1

(Para A. 1.1 of Master Circular)

Foreign Exchange Management (Current Account Transactions) Rules, 2000

Notification No. G.S.R.381(E) dated 3rd May 2000 (as amended from time to time)*:

In exercise of the powers conferred by Section 5 and sub-section (1) and clause (a) of sub-section (2) of Section 46 of the Foreign Exchange Management Act, 1999, and in consultation with the Reserve Bank, the Central Government having considered it necessary in the public interest, makes the following rules, namely:--

1. Short title and commencement.---(1) These rules may be called the Foreign Exchange Management (Current Account Transactions) Rules, 2000;

(2) They shall come into effect on the 1st day of June 2000.

2. Definitions---In these rules, unless the context otherwise requires :

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "Drawal" means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability;

(c) "Schedule" means a schedule appended to these rules;

(d) The words and expressions not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Prohibition on drawal of Foreign Exchange---Drawal of foreign exchange by any person for the following purpose is prohibited, namely:

a. a transaction specified in the Schedule I; or

b. a travel to Nepal and/or Bhutan; or

c. a transaction with a person resident in Nepal or Bhutan.

Provided that the prohibition in clause (c) may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order.

4. Prior approval of Government of India---No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India;

Provided that this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

5. Prior approval of Reserve Bank

No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank;

Provided that this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

6. (1) Nothing contained in Rule 4 or Rule 5 shall apply to drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter.

(2) Notwithstanding anything contained in sub-rule (1), restrictions imposed under rule 4 or rule 5 shall continue to apply where the drawal of foreign exchange from the Exchange Earners Foreign Currency (EEFC) Account is for the purpose specified in items 10 and 11 of Schedule II, or item 3, 4, 11, 16 & 17 of Schedule III as the case may be.

7. Use of International Credit Card while outside India

Nothing contained in Rule 5 shall apply to the use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India.

Schedule I

Transactions which are Prohibited (see rule 3)

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

Schedule II

Transactions which require prior approval of the Central Government
(see Rule 4)

Purpose of Remittance	Ministry / Department of Govt. of India whose approval is required
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings	Ministry of Finance, (Department of Economic Affairs)
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4. Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service providers	 Ministry of Information and Broadcasting Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)

8. omitted	
9. Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000. 10. Omitted 11. Remittance for membership of P&I Club	Ministry of Human Resources Development (Department of Youth Affairs and Sports) Ministry of Finance (Insurance Division)

Schedule III
(See Rule 5)

1. Omitted

2. Release of exchange exceeding US$ 10,000 or its equivalent in one financial year, for one or more private visits to any country (except Nepal and Bhutan).

3. Gift remittance exceeding US$ 5,000 per financial year per remitter or donor other than resident individual

4. (i) Donation exceeding US$ 5000 per financial year per remitter or donor other than resident individual

(ii) Donations by Corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US$ 5,000,000, whichever is less, for:-
(a) creation of Chairs in reputed educational institutes,

(b) to funds (not being an investment fund) promoted by educational institutes; and

(c) to a technical institution or body or association in the field of activity of the donor Company.

Explanation: For the purpose of the item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the Liberalised Remittance Scheme.

5. Exchange facilities exceeding USD 100,000 for persons going abroad for employment.

6. Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country of emigration.

7. Remittance for maintenance of close relatives abroad,@@

i. exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and –
(a) is a citizen of a foreign State other than Pakistan; or
(b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.

ii. exceeding USD 100,000 per year, per recipient, in all other cases.

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

8. Release of foreign exchange, exceeding USD 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.

9. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.

10. Release of exchange for studies abroad exceeding the estimate from the institution abroad or USD 100,000, per academic year, whichever is higher.

11. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.

12. Omitted

13. Omitted

14. Omitted

15. Remittances exceeding US$ 10,000,000 per project for any consultancy services in respect of infrastructure projects and US$ 1,000,000 per project, for other consultancy services procured from outside India.

Explanation:- For the purposes of this item number 'infrastructure project' is those related to –
(i) Power,
(ii) Telecommunication,
(iii) Railways,
(iv) Roads including bridges,
(v) Sea port and air port,
(vi) Industrial parks, and
(vii) Urban Infrastructure (water supply, sanitation and sewage)

16. Omitted

17. Remittances exceeding five per cent of investment brought into India or US$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

18. Omitted

(Amendments)

Notification GSR.663 (E) dated August 17, 2000,
S.O.301(E) dated March 30, 2001,
GSR.442(E) dated November 2, 2002,
GSR.831(E) dated December 20, 2002,
GSR.33(E) dated January 16, 2003,
GSR.397(E) dated May 14, 2003,
GSR.731(E) dated September 11, 2003,
GSR.849(E) dated October 29, 2003,
GSR.608(E) dated September 13, 2004,
G.S.R.512(E) dated July 28,2005,
G.S.R.412(E) dated July 11, 2006,
G.S.R.511(E) dated July 28, 2006,
G.S.R.349 (E) dated May 22, 2009 and
G.S.R.382 (E) dated May 05, 2010.
G.S.R No.488 (E) dated July 11, 2014

Please Note:-

@@ May be read with A.P. (DIR Series) Circular No.26 dated January 14, 2010.

Annex-2
(Para A 2.4 of Master Circular)

FORM - A 2
Application cum Declaration Form
(To be completed by the applicant)

FORM A2

(For payments other than imports and remittances covering intermediary trade)

Application for Remittance Abroad

AD Code No.______________________
Form No.______________________
(To be filled in by the Authorised Dealer)
Serial No. ______________________
(For use of Reserve Bank of India)
Currency ______________ Amount __________
Equivalent to Rs. ______________________
(To be completed by Authorised Dealer)

I/We

____
(Name of applicant remitter)

authorize

____
(Name of AD branch)

Savings Bank/ Current/ RFC/ EEFC A/c. No. ______________________ together with their charges and

* a) Issue a draft : Beneficiary's Name______________________________
  Address ______________________________
  ____

* b) Effect the foreign exchange remittance directly –
  1) Beneficiary's Name ______________________________
  2) Name and address of the bank ______________________________
  3) Account No. ______________________________

* c) Issue travelers cheques for ______________________________
* d) Issue foreign currency notes for ______________________________

* (Strike out whichever is not applicable)
for the purpose indicated below

(Remitter should put a tick (√) against an appropriate purpose code. In case of doubt/ difficulty, the AD bank should be consulted).

____
Signature
Name :

Date :

____

Sr. No.	Purpose Group Name	Purpose Code	Description

As per the Annex			

Declaration
(Under FEMA 1999)

I, ____ declare that –

* (1) The total amount of foreign exchange purchased from or remitted through, all sources in India during this calendar year including this application is within USD ________________ (USD ________________
____
___ only) the annual limit prescribed by Reserve Bank of India for the said purpose.

* (2) Foreign exchange purchased from you is for the purpose indicated above.

* (Strike out whichever is not applicable)

Signature

Name ____________________

Date :

Annex to Form A 2
Purpose Codes for Reporting under FETERS
A. Payment Purposes (for use in BOP file)

Gr. No.	Purpose Group Name	Purpose Code	Description
0	Capital Account	S0017	Acquisition of non-produced non-financial assets (Purchase of intangible assets like patents, copyrights, trademarks etc., land acquired by government, use of natural resources) – Government
		S0019	Acquisition of non-produced non-financial assets (Purchase of intangible assets like patents, copyrights, trademarks etc., use of natural resources) – Non-Government
		S0026	Capital transfers (Guarantees payments, Investment Grand given by the government/international organisation, exceptionally large Non-life insurance claims) – Government
		S0027	Capital transfers (Guarantees payments, Investment Grand given by the Non-government, exceptionally large Non-life insurance claims) – Non-Government
		S0099	Other capital payments not included elsewhere
	Financial Account		
	Foreign Direct Investments	S0003	Indian Direct investment abroad (in branches & wholly owned subsidiaries) in equity Shares
		S0004	Indian Direct investment abroad (in subsidiaries and associates) in debt instruments
		S0005	Indian investment abroad – in real estate
		S0006	Repatriation of Foreign Direct Investment made by overseas Investors in India – in equity shares
		S0007	Repatriation of Foreign Direct Investment in made by overseas Investors India – in debt instruments
		S0008	Repatriation of Foreign Direct Investment made by overseas

			Investors in India – in real estate
	Foreign Portfolio Investments	S0001	Indian Portfolio investment abroad – in equity shares
		S0002	Indian Portfolio investment abroad – in debt instruments
		S0009	Repatriation of Foreign Portfolio Investment made by overseas Investors in India – in equity shares
		S0010	Repatriation of Foreign Portfolio Investment made by overseas Investors in India – in debt instruments
	External Commercial Borrowings	S0011	Loans extended to Non-Residents
		S0012	Repayment of long & medium term loans with original maturity above one year received from Non-Residents
	Short term Loans	S0013	Repayment of short term loans with original maturity up to one year received from Non-Residents
	Banking Capital	S0014	Repatriation of Non-Resident Deposits (FCNR(B)/NR(E)RA etc)
		S0015	Repayment of loans & overdrafts taken by ADs on their own account.
		S0016	Sale of a foreign currency against another foreign currency
	Financial Derivatives and Others	S0020	Payments made on account of margin payments, premium payment and settlement amount etc. under Financial derivative transactions.
		S0021	Payments made on account of sale of share under Employee stock option
		S0022	Investment in Indian Depositories Receipts (IDRs)
		S0023	Remittances made under Liberalised Remittance Scheme (LRS) for Individuals
	External Assistance	S0024	External Assistance extended by India. *e.g.* Loans and advances extended by India to Foreign governments under various agreements

		S0025	Repayments made on account of External Assistance received by India.
1	Transport	S0201	Payments for surplus freight/passenger fare by foreign shipping companies operating in India
		S0202	Payment for operating expenses of Indian shipping companies operating abroad
		S0203	Freight on imports – Shipping companies
		S0204	Freight on exports – Shipping companies
		S0205	Operational leasing/Rental of Vessels (with crew) –Shipping companies
		S0206	Booking of passages abroad – Shipping companies
		S0207	Payments for surplus freight/passenger fare by foreign Airlines companies operating in India
		S0208	Operating expenses of Indian Airlines companies operating abroad
		S0209	Freight on imports – Airlines companies
		S0210	Freight on exports – Airlines companies
		S0211	Operational leasing / Rental of Vessels (with crew) – Airline companies
		S0212	Booking of passages abroad – Airlines companies
		S0214	Payments on account of stevedoring, demurrage, port handling charges etc.(Shipping companies)
		S0215	Payments on account of stevedoring, demurrage, port handling charges, etc.(Airlines companies)
		S0216	Payments for Passenger - Shipping companies
		S0217	Other payments by Shipping companies
		S0218	Payments for Passenger - Airlines companies
		S0219	Other Payments by Airlines companies

		S0220	Payments on account of freight under other modes of transport (Internal Waterways, Roadways, Railways, Pipeline transports and others)
		S0221	Payments on account of passenger fare under other modes of transport (Internal Waterways, Roadways, Railways, Pipeline transports and others)
		S0222	Postal & Courier services by Air
		S0223	Postal & Courier services by Sea
		S0224	Postal & Courier services by others
2	Travel	S0301	Business travel.
		S0303	Travel for pilgrimage
		S0304	Travel for medical treatment
		S0305	Travel for education (including fees, hostel expenses etc.)
		S0306	Other travel (including holiday trips and payments for settling international credit cards transactions)
3	Construction Services	S0501	Construction of projects abroad by Indian companies including import of goods at project site abroad
		S0502	Cost of construction etc. of projects executed by foreign companies in India.
4	Insurance and Pension Services	S0601	Life Insurance premium except term insurance
		S0602	Freight insurance – relating to import & export of goods
		S0603	Other general insurance premium including reinsurance premium; and term life insurance premium
		S0605	Auxiliary services including commission on insurance
		S0607	Insurance claim Settlement of non-life insurance; and life insurance (only term insurance)
		S0608	Life Insurance Claim Settlements
		S0609	Standardised guarantee services
		S0610	Premium for pension funds
		S0611	Periodic pension entitlements e.g. monthly quarterly or yearly payments of pension amounts by Indian Pension Fund Companies.
		S0612	Invoking of standardised guarantees

5	Financial Services	S0701	Financial intermediation, except investment banking - Bank charges, collection charges, LC charges etc.
		S0702	Investment banking – brokerage, under writing commission etc.
		S0703	Auxiliary services – charges on operation & regulatory fees, custodial services, depository services etc.
6	Telecommunication, Computer & Information Services	S0801	Hardware consultancy/implementation
		S0802	Software consultancy / implementation
		S0803	Data base, data processing charges
		S0804	Repair and maintenance of computer and software
		S0805	News agency services
		S0806	Other information services- Subscription to newspapers, periodicals
		S0807	Off-site software imports
		S0808	Telecommunication services including electronic mail services and voice mail services
		S0809	Satellite services including space shuttle and rockets etc.
7	Charges for the use of intellectual property n.i.e	S0901	Franchises services
		S0902	Payment for use, through licensing arrangements, of produced originals or prototypes (such as manuscripts and films), patents, copyrights, trademarks and industrial processes etc.
8	Other Business Services	S1002	Trade related services – commission on exports / imports
		S1003	Operational leasing services (other than financial leasing) without operating crew, including charter hire- Airlines companies
		S1004	Legal services
		S1005	Accounting, auditing, book-keeping services
		S1006	Business and management consultancy and public relations services
		S1007	Advertising, trade fair service
		S1008	Research & Development services
		S1009	Architectural services
		S1010	Agricultural services like protection against insects &

			disease, increasing of harvest yields, forestry services.
		S1011	Payments for maintenance of offices abroad
		S1013	Environmental Services
		S1014	Engineering Services
		S1015	Tax consulting services
		S1016	Market research and public opinion polling service
		S1017	Publishing and printing services
		S1018	Mining services like on–site processing services analysis of ores etc.
		S1020	Commission agent services
		S1021	Wholesale and retailing trade services.
		S1022	Operational leasing services (other than financial leasing) without operating crew, including charter hire- Shipping companies
		S1023	Other Technical Services including scientif c/space services.
		S1099	Other services not included elsewhere
9	Personal, Cultural & Recreational services	S1101	Audio-visual and related services like Motion picture and video tape production, distribution and projection services.
		S1103	Radio and television production, distribution and transmission services
		S1104	Entertainment services
		S1105	Museums, library and archival services
		S1106	Recreation and sporting activities services
		S1107	Education (e.g. fees for correspondence courses abroad)
		S1108	Health Service (payment towards services received from hospitals, doctors, nurses, paramedical and similar services etc. rendered remotely or on-site)
		S1109	Other Personal, Cultural & Recreational services
10	Govt. not included elsewhere (G.n.i.e.)	S1201	Maintenance of Indian embassies abroad
		S1202	Remittances by foreign embassies in India
11	Secondary Income	S1301	Remittance for family maintenance and savings
		S1302	Remittance towards personal

			gifts and donations
		S1303	Remittance towards donations to religious and charitable institutions abroad
		S1304	Remittance towards grants and donations to other governments and charitable institutions established by the goverrments.
		S1305	Contributions/donations by the Government to international institutions
		S1306	Remittance towards payment / refund of taxes.
		S1307	Outflows on account of migrant transfers including personal effects
12	Primary Income	S1401	Compensation of employees
		S1402	Remittance towards interest on Non-Resident deposits (FCNR(B)/NR(E)RA, etc.)
		S1403	Remittance towards interest on loans from Non-Residents (ST/MT/LT loans) e.g. External Commercial Borrowings, Trade Credits, etc.
		S1405	Remittance towards interest payment by ADs on their own account (to VOSTRO a/c holders or the OD on NOSTRO a/c.)
		S1408	Remittance of profit by FDI enterprises in India (by branches of foreign companies including bank branches)
		S1409	Remittance of dividends by FDI enterprises in India (other than branches) on equity and investment fund shares
		S1410	Payment of interest by FDI enterprises in India to their Parent company abroad.
		S1411	Remittance of interest income on account of Portfolio Investment in India
		S1412	Remittance of dividends on account of Portfolio Investment in India on equity and investment fund shares
13	Others	S1501	Refunds / rebates / reduction in invoice value on account of exports
		S1502	Reversal of wrong entries, refunds of amount remitted for non-exports

		S1503	Payments by residents for international bidding
		S1504	Notional sales when export bills negotiated/ purchased/ discounted are dishonored/ crystallised/ cancelled and reversed from suspense account
		S1505	Deemed Imports (exports between SEZ, EPZs and Domestic tariff areas)
14	Maintenance and repair services n.i.e	S1601	Payments on account of maintenance and repair services rendered for Vessels, ships, boats, warships, etc.
		S1602	Payments on account of maintenance and repair services rendered for aircrafts, space shuttles, rockets, military aircrafts, helicopters, etc.
15	Manufacturing services (goods for processing)	S1701	Payments for processing of goods

Annex – 3

(Para 13.17 of Master Circular)

Application-cum- Declaration for purchase of foreign exchange under the Liberalised Remittance Scheme of USD 125,000 for Resident Individuals (To be completed by the applicant)

I Details of the applicant

a. Name ....
b. Address............................
c. Account No.........................
d. PAN No.............................

II Details of the foreign exchange required

1. Amount (Specify currency)..................................
2. Purpose ....

III Source of funds: ....

IV Nature of instrument

Draft...............
Direct remittance...........

V Details of the remittance made under the scheme in the financial year (April - March) 200 ....

Date Amount

VI Details of the Beneficiary

1. Name ....
2. Address ....
   ....
3. Country
* 4. Name and address of the bank...........................
* 5. Account No.....................................

(* Required only when the remittance is to be directly credited to the bank account of the beneficiary)

This is to authorize you to debit my account and effect the foreign exchange remittance/issue a draft as detailed above. (strike out whichever is not applicable).

Declaration

I, ..., hereby declare that the total amount of foreign
(Name)
exchange purchased from or remitted through, all sources in India during the current financial year as per item No. V of the Application, is within the limit of USD 125,000/- (US Dollar one lakh twenty five thousand only), which is the limit prescribed by the Reserve Bank for the purpose and certify that the source of funds for making the said remittance belongs to me and will not be used for prohibited purposes.

Signature of the applicant
(Name)

Certificate by the Authorised Dealer

This is to certify that the remittance is not being made by/ to ineligible entities and that the remittance is in conformity with the instructions issued by Reserve Bank from time to time under the Scheme.

Signature:

Name and designation of the authorised official:

Place:

Date: Stamp and seal

Annex-4

Operational Instructions for Authorised Dealer Banks Master Circular on Miscellaneous Remittances from India – Facilities for Residents

1. General

Authorised Dealers may carefully study the provisions of the Act / Regulations / Notifications issued under Foreign Exchange Management Act, 1999.

Reserve Bank will not prescribe the documents which should be verified by the Authorised Dealers while permitting remittances for various transactions, particularly of current account.

In terms of the provisions contained in sub-section 5 of section 10 of the Act, before undertaking any transaction in foreign exchange on behalf of any person, an Authorised Dealer is required to obtain a declaration and such other information from the person (applicant) on whose behalf the transaction is being undertaken that will reasonably satisfy him that the transaction is not designed to contravene or evade the provisions of the Act or any of the Rules or Regulations made or Notifications or directions or orders issued under the Act. Authorised Dealers should preserve the information / documents obtained by them from the applicant before undertaking the transactions for verification by the Reserve Bank.

In case the person on whose behalf the transaction is being undertaken refuses or does not give satisfactory compliance of the requirements of an authorised person, he shall refuse in writing to undertake the transactions. Where an authorized person has reasons to believe that a contravention or evasion of the Act or the Rules or Regulations made or Notifications issued there under was contemplated in the transaction that he has refused to undertake, he shall report the matter to the Reserve Bank.

With a view to maintaining uniform practices, Authorized Dealers may consider requirements or documents to be obtained by their branches to ensure compliance with provisions of sub-section (5) of section 10 of the Act. In terms of the Rule 3 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for the transactions included in Schedule I thereto is prohibited.

Authorised Dealers may release foreign exchange for transactions included in Schedule II to the Rules, provided the applicant has secured the approval from the Ministry/Department of Government of India indicated against the transaction.

In respect of transactions included in Schedule III, where the remittance applied for exceeds the limit, if any, indicated in the schedule or other transactions included in the Schedule III for which no limit have been stipulated would require prior approval of Reserve Bank. However, resident individual has the option to avail the Liberalised Remittance Scheme for Resident Individuals for making additional amount of remittance, subject to compliance with the terms and conditions of the Scheme. Remittances for all other current Account transactions which are not specifically prohibited under the Rules or which are not included in Schedule II or III may be permitted by the Authorised Dealers without any monetary/percentage ceilings subject to compliance with the provisions of subsection (5) of Section 10 of the Act. Remittances for transactions included in Schedule III may be permitted by Authorised Dealers up to the ceiling prescribed thereto.

Remittances to non-residents are allowed to be made by the Authorised Dealers on production of an undertaking by the remitter and a Certificate from a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No.10/2002 dated October 9, 2002. [cf. A.P. (DIR Series) Circular No.56 dated November 26, 2002].

2. Release of foreign exchange on self declaration basis

Authorised Dealers may allow remittances up to USD 100,000 each towards (i) employment abroad (ii) emigration (iii) maintenance of close relatives abroad (iv) education abroad and (v) medical treatment abroad without insisting on any supporting documents but on the basis of self declaration incorporating the basic details of the transaction and submission of Application in Form A2. Authorised Dealers should also ensure that payment for purchase of foreign exchange is made by the applicant by means of cheque or demand draft or by debit to his/her account. Authorised Dealer may also accept the payment through credit /debit/prepaid card of the card holder as stipulated in our A.P. (DIR Series) Circular No.40 dated December 10, 2008. In addition, the existing facility of release of exchange by Authorised Persons up to USD 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan) will continue to be available on a self-declaration basis.

3. **Small Value Remittances**

Authorized dealers may release foreign exchange not exceeding USD 5,000 or its equivalent, for all permissible current account transactions. Authorised Dealers may obtain **simplified Application-cum-Declaration** form (Form A2) as shown at **Annex-2.**

4. **Liberalized Remittance Scheme for Resident Individuals**

The remittance under the Scheme is available to the resident individuals for any permitted current or capital account transactions or a combination of both.

The facility under the Scheme is in addition to those already included in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Remittances towards gift and donations have been subsumed under the Scheme.

Under the scheme, resident individuals can acquire and hold immovable property.Individuals can acquire shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. They can also open, maintain and hold foreign currency accounts with banks outside India. However remittance from India for margin or margin calls to overseas exchanges/overseas counterparty are not allowed under the scheme.

The individual will have to designate a branch of an AD through which all the remittances under the scheme will be made. It is mandatory to have PAN number to make remittances under the Scheme.

While allowing the facility to resident individuals, Authorised Dealers are required to ensure that "**Know Your Customer**" guidelines have been implemented in respect of bank accounts. They should also comply with the **Anti-Money Laundering Rules** in force while allowing the facility.

The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the Authorised Dealers should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank

statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained.

The Authorised Dealer should ensure that the payment is received out of funds belonging to the person seeking to make the remittance, by a cheque drawn on the applicant's bank account or by debit to his account or by Demand Draft / Pay Order. The banks should not extend any kind of credit facilities to resident individuals to facilitate remittances under the Scheme.

The remittances made under this Scheme will be reported in the R-Return in the normal course. The Authorised Dealers may also prepare and keep on record dummy Form A2, in respect of remittances exceeding USD 25000. In addition, Authorised Dealers would also furnish information on the number of applicants and total amount remitted under the Scheme, on a **monthly basis**, to the Reserve Bank of India, through the ORFS.

APPENDIX-1

List of circulars, which have been consolidated in the Master Circular- Miscellaneous Remittances from India - Facilities for Residents

http://www.rbi.org.in/Scripts/BS_ApCircularsDisplay.aspx
http://www.rbi.org.in/Scripts/Bs_FemaNotifications.aspx

Sl. No.	Circular No.	Date
1.	A.P.(DIR Series) Circular No.1	June 1, 2000
2.	A.P.(DIR Series) Circular No.19	October 30, 2000
3.	A.P.(DIR Series) Circular No.20	November 16, 2000
4.	A.P.(DIR Series) Circular No.11	November 13, 2001
5.	A.P.(DIR Series) Circular No.12	November 23, 2001
6.	EC.CO.FMD.599/18.08.01/2001-02	January 21, 2002
7	A.P.(DIR Series) Circular No.53	June 27, 2002
8.	A.P.(DIR Series) Circular No.16	September 12, 2002
9.	A.P. (DIR Series) Circular No.17	September 12, 2002
10.	A.P. (DIR Series) Circular No.37	November 1, 2002
11.	A.P.(DIR Series) Circular No.51	November 18, 2002
12.	A.P. (DIR Series) Circular No.53	November 23, 2002
13.	A.P. (DIR Series) Circular No.54	November 25, 2002
14	A.P. (DIR Series) Circular No.56	November 26,2002
15.	A.P. (DIR Series) Circular No.64	December 24, 2002
16	A.P. (DIR Series) Circular No.65	January 6, 2003
17.	A.P. (DIR Series) Circular No.73	January 24, 2003
18.	A.P. (DIR Series) Circular No.103	May 21, 2003
19.	A.P. (DIR Series) Circular No.3	July 17, 2003
20.	A.P. (DIR Series) Circular No.7	August 12, 2003
21.	A.P. (DIR Series) Circular No.8	August 16, 2003
22.	A.P. (DIR Series) Circular No.33	November 13, 2003
23.	A.P. (DIR Series) Circular No.55	December 23, 2003
24	A.P. (DIR Series) Circular No.64	February 4, 2004
25	A.P. (DIR Series) Circular No.71	February 20, 2004
26	A.P. (DIR Series) Circular No.76	February 24, 2004
27	A.P. (DIR Series) Circular No.77	March 13, 2004
28	A.P. (DIR Series) Circular No.86	April 17, 2004
29	A.P. (DIR Series) Circular No.90	May 3, 2004
30	A.P. (DIR Series) Circular No.20	October 25, 2004
31	A.P. (DIR Series) Circular No.38	March 31, 2005
32	A.P. (DIR Series) Circular No.46	June 14, 2005
33	A.P. (DIR Series) Circular No.25	March 6, 2006
34	A.P. (DIR Series) Circular No.13	November 17, 2006
35	A.P. (DIR Series) Circular No. 14	November 28, 2006

36	A.P. (DIR Series) Circular No. 24	December 20, 2006
37	A.P. (DIR Series) Circular No. 38	April 5, 2007
38	A.P. (DIR Series) Circular No. 58	May 18, 2007
39	A.P. (DIR Series) Circular No. 9	September 26, 2007
40	A.P. (DIR Series) Circular No. 36	April 4, 2008
41	Foreign Exchange Management (Current Account Transactions) Rules,2000	May 3, 2000 (and subsequent amendments) (Please see page 28)
42	A.P. (DIR Series) Circular No.15	September 8, 2008
43	A.P. (DIR Series) Circular No.40 A.P. (F. L. Series) Circular No.03	December 10, 2008
44	A.P. (DIR Series) Circular No.10	October 5, 2009
45	A.P. (DIR Series) Circular No.11	October 5, 2009
46	A.P. (DIR Series) Circular No. 50 A.P.(FL Series) Circular No. 7	May 4, 2010
47	A.P. (DIR Series) Circular No.52	May 13, 2010
48	A.P. (DIR Series) Circular No.29	December 22, 2010
49	A.P. (DIR Series) Circular No. 48	April 5, 2011
50	A.P. (DIR Series) Circular No. 17	September 16, 2011
51	A.P. (DIR Series) Circular No. 18	September 16, 2011
52	A.P. (DIR Series) Circular No. 32	October 10, 2011
53	A.P. (DIR Series) Circular No. 37	October 19, 2011
54	A.P. (DIR Series) Circular No. 90	March 6, 2012
55	A.P. (DIR Series) Circular No. 102	April 2, 2012
56	A.P. (DIR Series) Circular No. 118	May 7, 2012
57	A.P. (DIR Series) Circular No. 106	May 23, 2013
58	A.P. (DIR Series) Circular No.24	August 14, 2013
59	A.P. (DIR Series) Circular No.32	September 4, 2013
60	A.P. (DIR Series) Circular No. 138	June 3, 2014
61	A.P.(DIR Series) Circular No. 5	July 17, 2014
62	A.P. (DIR Series) Circular No. 19	August 11, 2014
63	A.P.(DIR Series) Circular No. 40	November 21, 2014

APPENDIX-2

1. Section 5 of FEMA, 1999

Current Account Transactions

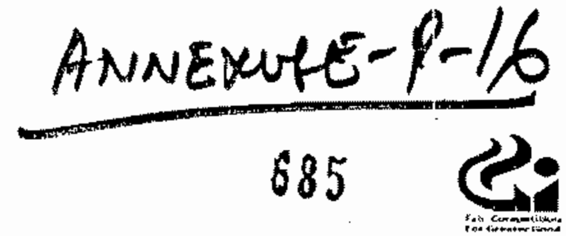
Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:
Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed. ***(para A.1.1 of Master Circular)***

2. Rule 3 of FEM (CAT) Rules, 2000

Prohibition on drawal of Foreign Exchange - Drawal of foreign exchange by any person for the following purpose is prohibited, namely:-
(a) a transaction specified in the Schedule I; or (b) a travel to Nepal and/or Bhutan; or (c) a transaction with a person resident in Nepal or Bhutan; Provided that the prohibition in clause (c) may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order.
(para A.1.4 of Master Circular)

3. Sub-section (5) of Section 10 of the FEMA, 1999

An authorized person shall before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made there under and where the said person refuses to comply any such requirement or makes only unsatisfactory compliance therewith , the authorized person shall refuse in writing to undertake the transaction and shall , if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank. ***(para A.14.1 of Master Circular)***



COMPETITION COMMISSION OF INDIA

Case No. 80 of 2014

In Re:

Mr. Mohit Manglani
A/01, Jethe Tower, Ambawadi,
Borivali East, Mumbai — Informant

And

1. M/s Flipkart India Private Limited
Ground Floor, 7th Main, 80 Feet Road, 3rd Block,
Koramangala Industrial Layout, Bangalore-34 — Opposite Party No. 1

2. M/s Jasper Infotech Private Limited
Building No. 246, 1st Floor, Okhla Industrial Estate,
Phase-III, New Delhi- 110020 — Opposite Party No. 2

3. M/s Xerion Retail Private Limited
Plot No. 109, Udyog Vihar, Phase-IV, Gurgaon-15 — Opposite Party No. 3

4. M/s Amazon Seller Services Private Limited
8th Floor, Brigade Gateway, 26/1,
Dr. Rajkumar Road, Bangalore-55 — Opposite Party No. 4

5. M/s Vector E-commerce Private Limited
Ground Floor & 1st Floor, Maruthi Chamber,
Annexe Survey No. 17/9B, Rupenaagaraha,
Hosur Road, Bangalore-54 — Opposite PartyNo. 5

CORAM

Mr. Ashok Chawla
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Appearances:

For the Opposite Party No. 1: 1. Shri Ramji Srinivasan, Senior Advocate
2. Shri H.S. Chandhoke, Advocate
3. Shri Abdullah Hussain, Advocate
4. Ms. Kanika Chaudhary Nayar, Advocate
5. Shri Divye Sharma, Advocate

For the Opposite Party No. 2: 1. Shri Manas Chaudhuri, Senior Advocate
2. Shri Sagardeep Singh, Advocate
3. Shri Ashish Ahuja
4. Ms. Shine Joy
5. Shri Lunita Hijam

For the Opposite Party No. 3: 1. Ms. Anindita Mitra, Advocate
2. Ms. Shruti Bhardwaj
3. Shri Satendra Vir Singh

For the Opposite Party No. 4: 1. Shri Anand S. Pathak, Advocate
2. Shri Akshay Nanda, Advocate
3. Shri Rakesh Bakshi
4. Shri Ankur Sharma

For the Opposite Party No. 5: 1. Shri Amit Tambe, Advocate
2. Shri Gautam Chawla, Advocate

All Delhi Computer Trader Association: 1. Shri Mahinder Aggarwal
2. Shri Swarn Singh
3. Shri Munish Sharma

For the Informant: The Informant in person.

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the '**Act**') by Mr. Mohit Manglani (hereinafter, the '**Informant**') against M/s Flipkart India Private Limited (hereinafter,'**OP 1**'),M/s Jasper Infotech Private Limited (hereinafter,'**OP 2**'), M/s Xerion Retail Private Limited (hereinafter,'**OP 3**'), M/s Amazon Seller Services Private Limited (hereinafter, '**OP 4**'), M/s Vector E-commerce Private Limited (hereinafter,'**OP 5**') and other e-commerce/portal companies (collectivelyhereinafter,'**OPs**') for their alleged contravention of the provisions of section 4 of the Act.

2. Briefly, OPs are the individual e-portals or e-commerce sites for online trade and commerce. The Informant has alleged that OPs have been indulging in anti-competitive practices in the nature of 'exclusive agreements' with sellers of goods/services. It has been urged that due to such practices, the consumer is left with no choice in regards to terms of purchase and price of the goods and services as thebuyer/consumercan either accept the terms and conditions in totality of the e-portal or opt not to buy the product.

3. The Informant alleged that the e-portals/e-commerce websites and product sellers enter into 'exclusive agreements' to sell the selected product exclusively on the selected portal to the exclusion of other e-portals or physical channels or through any other physical channel. Accordingly, the portal operator decides terms of re-sale, sale price, terms of payments, delivery period, quality and service standards *etc.* All of these conditions are non-negotiable for a consumer who intends to buy those products. Further, to create hype for the product, the supply is controlled by the e-portal with whom the exclusive arrangement has been made, creating an impression of scarcity.

4. The Informant has alleged that sections 3(1) read with section 3(4) of the Act are squarely applicable on 'exclusive agreement' and 'restrictive/unfair business practice' of these e-portals. It is contended that OP 1 has been campaigning in online and print media about author Chetan Bhagat's yet to be launched book titled 'Half Girlfriend' published by Rupa publications. The said book is available exclusively on OP 1's website. Buyers who wish to purchase the book have to unconditionally agree to all the terms and conditions. This, as per the Informant, amounts to exclusive agreement having an appreciable adverse effect on competition. It is urged that by slowly destroying players in physical market and creating product specific monopoly leading to manipulation of price, control of production and supply, imposing terms and conditions detrimental to interests of consumers, such agreements distort fair competition in the marketplace. The

Informant has highlighted a few other examples which are exclusive sold by one or the other OPs.

5. It is also alleged that each e-portal *i.e.*, each of the OPs has 100% market share for the product in which it is exclusively dealing and therefore, leads to dominance. It is contended that the relevant market in such a case has to be defined in context of a particular product in question and the dominance is also seen accordingly. For instance, OP 1 has 100% market share in the relevant market for the book 'Half Girlfriend'. Similarly, other OPs, who entered into exclusive agreements with suppliers/manufacturers of goods, also enjoy dominant position in the market for such goods.

6. Based on these allegations, the Informant has submitted that the practice of entering into exclusive agreement for sale and purchase of goods by way of e-commerce is violating the provisions of sections 3(1), 3(4) (b) & (c) and sections 4(a) (i), 4(b) (i) and 4(b) (ii) of the Act and have an appreciable adverse effect on competition in India.

7. To form *prima facie* opinion in the instant case, the Commission perused the documents submitted by the parties and heard the parties through their authorised representatives. Further, the Commission observed that the Director General ('**DG**')*vide* its letter dated 24.12.2014 has forwarded a complaint of one Shri Mahinder Aggarwal, President, All Delhi Computer Trader Association (ADCTA) against the e-portals/e-commerce companies who are OPs in the present case. Accordingly, the Commission decided to provide an opportunity of hearing to Shri Mahinder Aggarwal also.

8. OPs submitted that they are third party platforms and offer ready to use environment to potentially large number of customers and manufactures. It was submitted that an e-commerce portal's business is based on a market place model

where the manufacturer/supplier is the owner of the products sold through online retail portals and the customer making such purchase is the end consumer of the product, the online retail portals merely acting as a platform that bring the two sides together for facilitating the transaction.

9. It was contended by the OPs that the relevant product market as suggested by the Informant is misconceived and will lead to fallacious results. It was submitted that each of the products cannot be construed as relevant product market in themselves. The relevant market to be delineated on the basis of the products considered to be substitutable or interchangeable with each of these products. The products which exercise a sufficient price constraint on these products would form part of the same relevant market. As per the OPs the relevant market for books may be delineated on the basis of nature of sale *viz.*, consumer or institutional; on the basis of category or genre *e.g.*, adult fiction, children's books, cookery, travel, history, biography, scientific/technical *etc.;* and/or the language. Similarly, in case of smartphones the relevant market should be the market for smartphones, not a specific model of smartphone a specific company such as Redmi 1S and Mi 3 variants of Xiaomi Mobile. It was also contended that online and offline retail do not constitute separate relevant market as they are merely different channels of distribution which are substitutable. It was submitted that the product purchased, whether from online portal or through offline brick and mortar retail outlets is fundamentally the same and merely the distribution channel through which such product is procured differs.

10. It was submitted that in spite of growing demand of e-commerce and online retailing, it accounts for less than 1% of the total retail in India. As per the OPs online retail is a sub-set of the organized retail market and since organized retail itself constitutes a miniscule portion, about 8% approximately of the total retail market in India, the share of online retail is extremely less.

11. OPs submitted that their agreements with manufacturers have no provisions of exclusivity and the Informant has merely relied on the screenshots of these products without examining the actual agreements. It is further submitted that exclusivity, if any, is limited to online portals and not *vis-a-vis* brick and mortar stores. Accordingly, the manufacturer is free to sell the products in physical stores and on its own website. Further, it was contended that the exclusive agreement is not violative of section 3(4) of the Act as there is no appreciable adverse effect on competition (AAEC) in the relevant market.The OPs submitted that there is enough competition in the retail market and even in the e-portal marketand their respective shares are miniscule to cause any AAEC in the said market. It was contended that given the wide range of products, availability of substitutes, and consumer preferences, no single manufacturer (of apparel or books or smartphones) is able to exercise market power to cause any competition concern.

12. ADCTA, an association of computer traders, submitted that these e-portals/e-commerce websites have engaged in unfair trade practices and introduced illegal black money as Foreign Direct Investment in such business. It was contended that OPs have adopted the practice of purchasing goods from distributors/dealers on 21 to 30 days credit and then subsequently selling these products at prices lower than the purchase prices. As such, their liabilities increase many fold compared to their assets and to escape their creditors, they suddenly wind up their businesses and run away with money of distributors/dealers. ADCTA further submitted that OPs impose conditions like quantity restrictions, purchase of goods by the end consumers only for personal use and not re-sale *etc*. It is alleged that the OPs have also indulge in practices like predatory pricing in abuse of their dominant position under provisions of section 4(1) and 4(2) of the Act.

13. The Commission has perused the material available on record and heard the parties. The Informant is primarily aggrieved by the exclusive distribution arrangements between the manufacturers and OPs which, as per the Informant,

leave the consumer with no option but to accept the onerous terms/price as imposed by the exclusive online seller *i.e.*, OPs. It is alleged that the OPs have exclusive arrangements with manufacturers of products for exclusive launch of their upcoming products on their websites which is violative of certain provisions of section 3(4) as well as section 4 of the Act.

14. For analysing allegations pertaining to contravention of section 3 (4) read with section 3(1) of the Act, it is necessary to first establish the existence of an agreement/arrangement. Once the agreement is proved, the next enquiry is into the effects of such agreement/arrangement; the test being AAEC as per the factors laid down under section 19(3) of the Act.

15. Though the OPs have denied exclusive arrangements, accepting that such exclusive arrangement did in fact exist, the important question is whether such arrangements/agreements are anti-competitive. Section 3(1) of the Act unequivocally condemns only such agreement/arrangement/understanding which has or is likely to have an AAEC in the market. Section 3(3) of the Act presumes AAEC in case of certain horizontal agreements/arrangements which have been specifically identified therein. However, vertical agreements/arrangements under section 3(4) and other agreements/arrangements which do not fall under section 3(3) are anti-competitive only when AAEC is proved. Therefore, the Commission has to consider various factors laid down under section 19(3) of the Act such as: a) creation of barriers to new entrants in the market; b) driving existing competitors out of the market; c) foreclosure of competition by hindering entry into the market; d)accrual of benefits to consumers; e) improvements in production or distribution of goods or provision of services; and f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services to assess the effect of such exclusive arrangement between manufacturers and e-portals.

16. The bare perusal of the agreement on the touchstone of the factors laid out above suggests that such agreements do not result into AAEC. It does not seem that such arrangements create any entry barrier for new entrants. It seems very unlikely that an exclusive arrangement between a manufacturer and an e-portal will create any entry barrier as most of the products which are illustrated in the information to be sold through exclusive e-partners (OPs) face competitive constraints. For example, mobile phones, tablets, books, camera *etc*., are neither alleged nor seem to be trodden by monopoly or dominance. Further, it does not appear that because of these exclusive agreements any of the existing players in the retail market are getting adversely affected, rather with new e-portals entering into the market, competition seems to be growing.

17. Further, the Commission observes that online distribution channel by the OPs provide an opportunity to the consumers to compare the prices as well as the pros and cons of the product. Furthermore, through the option of delivery right at their door steps consumers have the opportunity to accept the purchase at their convenience and do not need to set aside a couple of hours at a stretch to make the purchase through a brick-and-mortar retail outlet. Therefore, at this stage, it does not appear that the exclusive arrangement between manufacturers and OPs lead to AAEC in the market.

18. With regard to allegations pertaining to section 4 of the Act, the relevant market needs to be determined where OPs are operating. In this context, the Commission is convinced with the OPs that every product cannot be taken as a relevant market in itself. Irrespective of whether we consider e-portal market as a separate relevant product market or as a sub-segment of the market for distribution, none of the OPs seems to be individually dominant. There are several players in the online retail market which have been arrayed as OPs in the present case, offering similar facilities to their customers. In view of the above, the Commission does

not consider it necessary to go into the question of abuse of dominance by the OPs as raised by the Informant and ADCTA.

19. In the light of the above analysis, the Commission is of the *prima facie* view that no case of contravention of the provisions of either section 3 or section 4 of the Act is made out against the OPs. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

20. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S.L.Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U.C. Nahta)
Member

New Delhi
Dated: 23.04.2015

ANNEXURE - P-17

Subject: **Views on FDI**
To: ahmed.i@nic.in

Date: 01/30/14 08:15 PM
From: Akshay Damle <akshay.damle@gmail.com>

1. Should FDI be allowed in B2C e-commerce?
A) yes it must

2. Should FDI be opened for all products or only for non-food products?
A) for all products

3. Whether there should be a limit on minimum capitalization?
A) yes

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?
A) yes at least 40%

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?
Yes

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?
It won't affect it much

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?
More consumer choice, more jobs, greater competition.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?
Everything

Regards,
Akshay

Feedback on the discussion paper by DIPP

Amazon welcomes the discussion paper developed by the Department and strongly supports the easing of Foreign Direct Investment (FDI) restrictions in B2C E-commerce in India. The liberalization would significantly benefit Indian consumers and manufacturers as well as enable the growth of the broader national economy. Removing restrictions on inventory led E-commerce will allow E-commerce players to source directly from far flung Indian manufacturers, both large and small, and generate enough working capital as well as strategic expertise to invest in the form of warehouses, supply chain management, and logistics services, among others. These infrastructure developments will further generate local employment, including customer care (BPOs), warehousing, logistics and transportation, as well as administration, thus accelerating India's growth and development.

Unrestricted E-commerce would give Indian consumers located both in urban and semi-urban areas a wider variety of goods at lower prices, thus directly advancing the goal of inclusive growth especially in inflationary conditions. Expansion of the E-commerce sector by enabling foreign investments helps in lowering the barriers to entry for small and medium-sized businesses that often lack the capital to create physical stores to being selling their wares via E-commerce players. India Post, a great logistics partner in remote rural deliveries will see expanded opportunities of nearly 6 x of today's capacity should there be an expansion in inventory based E-commerce.

Investments and partnerships, cutting edge technology and sophisticated processes adopted by online business to consumer E-commerce players will allow small and medium enterprises to focus on their core competencies of producing goods, creating new content and then leveraging online ecommerce players as inexpensive channels to scale both nationally and globally. Without an expanded E-commerce system, limited to only marketplace formats, several micro, small and medium enterprises need to invest in retailing skills instead of scaling up production capabilities. Independent content producers and authors are denied access to using online platforms to reach national and global customer bases. A robust E-commerce system with a host of varied online retailers helps enables small and large enterprises to focus on their core production capabilities and creates more choice both for producers/authors and for consumers. Requiring little more than an internet connection, small businesses/entrepreneurs will get visibility for their products through high quality E-commerce platforms and ease of inventory management as they reach out to a national and potentially global customer base.

The hyperlinked article also provides for a very interesting third party analysis of the socially empowering nature of business to consumer online retail-
http://www.zdnet.com/india-still-ponders-allowing-fdi-in-e-commerce-7000024905/

Sl No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Create many new opportunities for manufacturers, especially to smaller and mid-size manufacturers unable to scale via physical retailers. b) Momentum to exports for SMEs as they get access to global markets at the click of a button. c) Enables several independent authors and content producers to publish and promote their original work inexpensively and reach large customer sets. Allowing small and large Indian content producers to	None

		access online channels to promote their work and scale. d) Will assist in the development of infrastructure (e.g. warehousing), logistics (courier/postal service) and create more jobs both in urban and semi urban areas. It will also build the last mile connectivity - a serious impediment to growth in the country. e) Enable rural consumers' access to similar products like their urban counterparts, thereby contributing to the building of a more inclusive society. f) Enhanced E-commerce activity brings in transparency in financial transactions and enables better tax collection. g) Enhance and mature E-commerce activity will enable larger selection, availability, thereby making prices on products more competitive and creating a better eco-system for the Indian consumer located in remote areas h) New opportunities for mobile, telecom and other technology infrastructure businesses; i) New payment products and acceleration in the development of payments infrastructure; j) Technopak estimates that, by 2021, firms, small enterprises, and freelancers will have the potential to earn ~$ 7.5 billion annually by providing services to business to consumer E-commerce businesses if the sector is allowed to grow	
ii	Should it be open for all products or only for non-food products?	It could be restricted at this juncture to non-perishable products only.	The sector could first gain maturity in the supply and delivery of non-perishable goods.
iii	Should a limit for minimum capitalization be laid down?	Minimum capitalization requirements to boost infrastructure and employment will be beneficial to the country	
iv	Should a limit for percentage of	The value of an expanded online retail	Amazon would recommend

	sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	eco-system is to enable increased sourcing from local enterprises to offer Indian consumers a large array of local goods and content. This is core to a robust and mature local online eco-system.	practical limits of domestic sourcing for the industry. Sourcing for goods should be required from all domestic enterprises and not restricted by just size. The mandate should be applied to the total quantity of goods sourced. It will be difficult to apply these conditions to digital content.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	Online E-commerce players with FDI in inventory led processes can be restricted to not set up physical front end stores in states that do not support FDI in MBRT in order to preserve consistency with the MBRT policy.	It is important to understand the operational and beneficial distinction between E-commerce and offline retail. Any additional restriction based on location to deliver to the consumer will goes against the very tenets of E-commerce which is meant to provide scale to manufacturers and to provide inclusive access to consumers nationally. The very nature of E-commerce is to transcend physical boundaries and provide affordable avenues for scale and access to both suppliers and consumers.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To enable foreign investors to make substantial investments in the Indian E-commerce sector throughout the value chain from consumer services to providing a wide selection of digital products and services, logistics to supply chain technologies to seller and manufacturer services, it would be very beneficial to allow 100% FDI. Amazon also appreciates the Government's efforts and will suggest a 51% automatic route for FDI in business to consumer E-commerce. We look forward to building strong collaborations and partnerships with Indian entities.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers)	1) Enablement of FDI into this sector could see hundreds of millions of dollars in investments from just one or two companies and several millions of dollars in infrastructure itself. It is estimated that the E-commerce industry in India is expected to	None

	3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	contribute around 4% of GDP by 2020. *Source: KPMG* Case in point- some unrestricted e-commerce industries such as China's online business to consumer online industry which has allowed FDI had grown by a compounded annual growth rate of 120 percent for 10 years. Its online B2C sector reached $26 billion by the 3rd quarter of 2013. Studies show that due to E-tailing, labor productivity in China will receive a boost of 14% by the end of 2020. China's e-tailing industry invested upto $5.7 billion in logistics in 2011. Indonesia, in comparison, has double its online E-commerce industry size in 2013 from 2012 and is at $8billion currently with a much lower population. - *Sources: Mckinsey, Velasia.* 2) E-tailing or b2c E-commerce can provide employment to ~1.45 million people by 2021. Its growth will spur the creation of new capabilities and human skills in the areas of logistics, packaging, and computing infrastructure. Additionally, such growth will promote the rise of service entrepreneurs who will have the potential to earn ~USD 7.5 billion, annually, by 2021. It will open up international markets for the SME sector and can become an important facilitator for the growth of the cargo and telecom industries- *Source Technopak* . India Post, a great logistics partner in remote rural deliveries will see expanded opportunities of nearly 6 x of today's capacity should there be an expansion in inventory based E-commerce. 3) If e-tailing in India is allowed to grow to the projected size, it will require massive warehousing and order processing capabilities. There will, however, be one difference in this capability generation - India may not take a high-end technology adoption route due to its relative advantage in terms of labor costs. This could create approximately 0.25 million jobs. Customer care (BPOs), IT and	

		ITeS, logistics/transportation, shipping and administration for E-commerce would create 1 million jobs by 2021 according to some estimates . –*Source Technopak* 4) As outlined above, business to consumer E-commerce helps enable economies of scale. Allowing online retailers enough working capital to buy large scale inventory directly from small and large remote manufacturers and creating processes to store and supply efficiently to consumers is the hall mark of business to consumer E-commerce. Scale leads to a wide selection, and availability, thereby lowering price and generating a cycle of demand. To maintain demand, efficiency of delivery, reach, storage and other supply chain operations becomes critical. This also creates a sustainable and recurring source of revenue for the manufacturer and logistics partners including government entities such as India Post. **It's also important to remember that most E-commerce platforms will use a hybrid model allowing third party small and medium retailers both offline and online to sell via their platform as well as they will also source directly from manufacturers. This will be a win-win for the entire economic eco-system as retailers benefit from higher consumer demand online and manufacturers also sell directly to the online platform and scale inexpensively.** Case in point that Amazon.in in 6 months has over 1000 micro and small retailers already comprising 50% of its seller base. Value for money : E-commerce players are characterized by transparent and competitive pricing which affords direct savings for end consumers. The e-tailing model creates more efficient supply chain processes and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-	

		commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point. *Source: OECD; KPMG* <u>Benefits to the customer</u> – the case of EU Research shows that customers experience significant cost savings while shopping online. It is estimated that by buying online, across the EU, consumers could save up to EUR 745 (in a basket of 100 goods with a median price of EUR 112). In addition to lower prices and access to products, customers in rural or sub-urban areas can benefit from reliability and better quality of products as compared to those supplied by local unorganized retailers. The consumer side risk is drastically reduced due to favorable return policies extended by E-commerce players. More than 60 percent of the top 30 retailers have return policies which (combined with COD) significantly cover the risks of the customers. Availability of desired products and services :The surge in multi-product E-commerce players provides numerous choices at a single place and across product categories. Moreover, E-commerce helps in increasing the availability of products beyond the metro cities to tier 1 and tier 2 cities where presence of organized retail is limited. Research in EU shows that in a typical shopping trip, consumers have at least double the selection options when shopping domestically online rather than offline. At national level, it is estimated that consumers have 2.5 times more choice when shopping online. *Source: OECD* The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the	

		business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros.-*Source:KPMG*	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. There cannot be any specific distinction between products and services as with growing technological advancements several products or goods are available in digital formats and not in the traditional physical format. The mode of consumption could also differ from actual ownership and use of a product after purchase to mere real time online consumption from a server on a cloud. <u>Example</u>: Some global programs offered by E-commerce companies allow independent producers of content to register and supply their products to the online retailer who then markets and further sells it to thousands of consumers providing the producer of content immediate and inexpensive scale.	Disallowing specific formats or excluding certain formats of products will create confusion and also exclude many Indian independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences. This has been outlined extensively above.

Subject: Foreign Direct Investment in E-commerce
To: ahmed.i@nic.in

Date: 01/30/14 06:43 PM
From: Amit Goyal <goyal.ak@gmail.com>

Dear Sir,

Pleas find below my views on the B2C FDI issue.

1. Should FDI be allowed in B2C e-commerce? Yes
2. Should FDI be opened for all products or only for non-food products? All Products
3. Whether there should be a limit on minimum capitalization? No
4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit? No
5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%? Yes
6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores? States should regulate that
7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency? Additional employment, improved supply chain infrastructure, and productivity & efficiency.
8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property? Everything.

Best,
Amit

Amit Kumar Goyal

LinkedIn | Twitter | Blog

Disclaimer

The author is a Chartered Accountant, working as senior finance executive in a Private Enterprise. The views expressed in this document are that of the individual and should not be construed to reflect the view of his employer in part or fully.

FDI Policy for E-commerce in India

Introduction

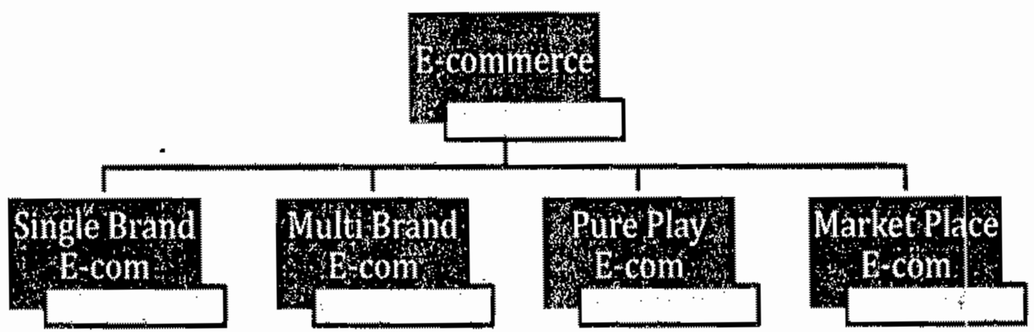
This note is in response to the ***"Discussion Paper on E-commerce in India"***[1] circulated on the website by the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India (www.dipp.nic.in)

This document specifically focuses on the questions raised in the discussion paper and is restricted to answering them. Since the document already covers a lot of information relating to E-commerce trade globally, as well as in India, with adequate emphasis on the data relating to the industry, the emphasis of this document is restricted to highlighting broad issues.

E-commerce as defined in the discussion paper is *sale or purchase of goods and services conducted over network of computers or TV channels by methods specifically designed for the purpose.*

Clearly, e-commerce is a platform through which product or services are transacted and therefore, in essence is a separate channel or distribution of sale, distinguishing itself from the traditional form of trade which for the purpose of convenience be termed "brick and mortar".

FDI policy in India has thus far distinguished between single brand and multi brand retail and has restricted the definition of such retail to brick and mortar retail and clearly restricted retailing through e-commerce channels (B2c e-commerce). It is therefore essential to look segregate various forms of e-commerce on the same lines as brick and mortar retail.



[1] Discussion Paper circulated by DIPP (http://dipp.nic.in/English/Discuss_paper/Discussion_paper_ecommerce_07012014.pdf)

Single Brand E-com Retail (Type A)

The existing FDI policy[2] has defined Single Brand Retail as encompassing retail trade of products which are:

- Sold under a "Single Brand".
- Sold under the same brand internationally i.e. products are sold under the same brand in one or more countries other than India.
- Branded during the manufacturing process.

Established brands and brands that are distributed through the traditional channels of distribution, multi brand retail and single brand retail, use e-commerce as an additional channel through which to distribute. The purpose of these e-commerce portals generally are:

- To reach out to a larger customer base where their products are not easily available (increase distribution)
- Use the portal to launch products that will be exclusively distributed via this channel (product differentiation)
- Marketing tool to gain consumer insight as much of the brand sales may otherwise be happening through traditional wholesale and third party retail channels (consumer penetration)

Like in the case of the retail outlets operated by these "single brands", their e-commerce portals are also designed to sell the products offered under that brand. It is possible that the brand sells multiple categories of products and not all of them may be sold online. At the same time, it is possible that the brand may sell certain products or category of products only through the e-commerce channels without distributing it through the traditional channels.

These "single brands" typical derive their Intellectual Property value from the brand itself and the portals through which they are sold, are mere conduits for distribution. The e-commerce portal would in some sense be termed subservient to the principal brand – without the brand, the portal would not survive. An example of this could be an electronic brand selling its mobile phones directly to the customer or and airline selling tickets directly to the flyers.

The criteria to determine should therefore be:

- Is the portal the main IP created by the brand?
- In the absence of the brand, can the portal continue to operate as an independent business line?
- Can the brand be distributed through other channels (not necessary that they should)?

From these it seems appropriate to conclude that the e-commerce portal is a mere distribution channel and as such the brand derives its value from the products and the services that are offered by the "brand owner". It would therefore seem only logical, that, since retailing of Single Brand is allowed (subject to conditions), e-commerce by such brands should also be permitted, and no distinction should be brought on merely based on the channel of distribution.

[2] http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf

Multi-brand E-com Retail (Type B)

This refers to the e-commerce trade carried out by Multi-brand retailers as well as service providers like travel agents etc., whose principal business is the sale and distribution of brands not owned by them. Typically such retailers sell competing brands in each of the product category that they cater to. For example, an electronics retailer may be selling televisions made by all leading brands, likewise ticketing agents who sell airline tickets, but deal with all airlines alike.

The nature of retail in this segment has also evolved in a manner where the retailers create their own brands which compete with those others that they trade in. Generally the brands that are created by these retailers are their own intellectual property, but the distribution of this is restricted to sale from these multi-brand retail outlets. Currently, investments in such retail entities have been governed by the policy statement for Investment in Multi-Brand Retail (MBRT).

As an extension of their distribution through the brick and mortar stores, they may engage in selling through an e-commerce platform. The portals generally contain the third party articles as well as their own brands. As in the case of single brand retail, the purpose of the e-commerce is to complement the existing distribution set up and not to create a separate identity for the e-commerce business. The portal therefore enhances the value of the existing multi brand retailers. Then again, the Intellectual Property of the retailer is derived from the Stores that are operated by them and the e-commerce venture relies on this to drive traffic and sales.

In order to determine whether a retailer falls in this bucket, one would again need to look at:

- Is the portal the main IP created by the brand?
- In the absence of the brand, can the portal continue to operate as an independent business line?

Since the Multi brand retail is allowed subject to various restrictions, allowing them to operate e-commerce ventures will also have to be subjected to similar conditions. However, such restrictions, especially those relating to restrictions on distribution in only those states where MBRT is allowed, would severely restrict the benefit that these e-commerce portals.

Pure Play E-commerce Retail (Type C)

An alternative model to retailing has fast emerged in the form of retailers who deal ONLY through the e-commerce channels and have no alternative setup to retail the products and services that they deal in. They are pure play e-commerce portals ("PPER")

The main difference between a pure play e-commerce portal and that of a multi brand retailer is that the Intellectual Property of the former is completely derived from the portal itself, and that in the absence of the same, the retailer would not be in a position to derive income from retailing. Typically, these e-commerce companies invest heavily in developing the best in class features on their portal, akin to how retailers spend on design and feel of their stores. Such investment and innovations in the technology space often make them more a technology based company and less of a retailer in the minds of the customers.

The products that are sold through such portals are typically

- Branded products that are manufactured and distributed by the brand owners, and are purchased by the PPER
- Products that are manufactured by the PPER directly or indirectly or those unbranded products that are sourced.

The retailers rely on the power of the e-commerce to drive sales and the value of the intellectual property is derived from the portal. In the absence of traditional sales channels, the portal is essential to sell the products traded by the retailer and therefore becomes the central theme of the business.

While, this is essentially an alternative form of Multi brand retail the difference in the distribution channels makes PPER more cost efficient which allows them to pass on the benefits to the consumer in the form of discounts. Apart from convenience of being operational 24*7*365, consumers benefit from lower operational cost of PPER (as claimed !), which add value to the consumers. At the same time, the initial investment required for setting up such e-commerce ventures are in the form of investments in setting up the portal and the IT infrastructure and in the supply chain required to manage it.

Given the difference in the scope of business, the investment requirement for PPER has to be different from those of MBRT. Proposed mandate for such investment is given in Annexure 2.

Market Place E-com Retail (Type D)

Market Place E-com portals ("MPER) allow sellers to list products they intend to sell, or buyers the products they intend to buy. The portal earns revenue mostly through the commissions earned on the sales made by the sellers. Since the portals merely help bring buyers and sellers on a common platform, it is essential to understand if they can be said to be retailing.

The Oxford Dictionary defines retailing as *the business of selling goods to the public, usually through stores*. The Law Dictionary defines Retail[3] as "*to sell by small parcels, and not in the gross. To sell in small quantities.*"

The two definitions make it clear that the act of retailing involves an element of sale. In the current instance, the sale takes place between the buyer and the seller and not between the buyer and MPER. Sale of goods is governed by the Sales of Goods Act, 1930. Section 4, of that act states:

> *4. Sale and agreement to sell.-*
>
> *(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.*
>
> *(2) A contract of sale may be absolute or conditional*

[3] http://thelawdictionary.org/retail/

(3) Where under a contract of sale the property in the goods in transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

The manner in which the affairs of these portals are structured, the role of the portal therefore is quite restricted and cannot be said to be the seller. It may therefore be necessary to look at the transactions to determine whether the portal guarantees anything beyond what is normally expected from any person who acts as a mere facilitator of any transaction. In case it is established that the portal is not an agent of the seller and the role is restricting to only listing of the transactions, such portals cannot be said to be retailing and hence should not be brought under the purview of FDI in e-commerce.

Response to Queries raised in Discussion paper

Having segregated e-commerce ventures into different formats, that are in line with the FDI policy, the queries raised in the discussion paper need to be answered for each of these formats separately. These are detailed in Annexure 1.

Annexure 1

Point wise Response

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
1	Should FDI be allowed in e-commerce	Yes. This should be brought in line with single brand retailing (SBRT, as defined in paragraph 6.2.16.4 of the Consolidated FDI Policy dated 5th April 2013[4]) and the process, procedure and limits as applicable in that case should be applied in these cases too. Additional conditions may be needed to qualify as being Type A, as described above. In essence the Intellectual Property created would need to be tested as being derived from the brand or purely from the e-commerce portal.	Yes. Since this category involves Multi Brand Retailers setting up e-commerce platforms to enhance distribution, they should be equated to Multi-Brand Retailing (MBRT, as defined in paragraph 6.2.16.5 of the Consolidated FDI Policy dated 5th April 2013[5]) and the process, procedure and limits as applicable in that case should be applied in these cases too. Additional conditions may be needed to qualify as being Type A, as described above. In essence the Intellectual Property created would need to be tested as being derived from the brand or purely from the e-commerce portal.	Yes. A new category of retailer should be created in the FDI policy specifically for ***"Pure Play E-commerce Retailers" ["PPER"].*** The purpose of these ventures is to create an alternative retailing channel of all products, which is in line with MBRT, hence FDI should be allowed in such ventures in line with the policy for MBRT. In the case of MBRT, the purpose of mandating investment in backend was to develop infrastructure in the country. In the case of PPER, bulk of the investments may be in e-commerce platform, an intangible asset. Considering the model, investments would also be needed in back end storage and front end distribution. However, if the true benefits of e-commerce has to be derived, then	It is not a retailing activity and hence not covered by the regulations under Retailing.

[4] http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf
[5] http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
				centralization of process could be considered, thereby reducing the need to making large investments in back end infrastructure. Therefore mandating investments could be counterproductive to the consumers. See Annexure 2 for complete set of proposed rules.	
2	Should it be open for all products or only for non-food products	Should be open in all categories, including branded / food articles.	Since there are no restrictions on the products that can be retailed under the Multi Brand Retail policy, it would not be prudent to enforce any restrictions; hence all types of products and services should be allowed to be sold.	Should be open in all categories, including branded / unbranded food articles.	NA
3	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If Yes, what should be the limit	Yes. The same rules as applicable to SBRT should be applied in this case.	Yes. The limits as prescribed under the policy for Multi Brand Retail should be followed in this case too. However, there has to be adequate clarity on how the domestic sourcing will be calculated. Since the concept is to sell multiple brands, the Retailer in this case buys products from the "brands" who can (a) Manufacture locally through own manufacturing plant (b) Manufacture locally through contract manufacturers, (c) Import into India. Since the	A PPER generally deals with branded products which are manufactured and distributed by the brand owners or their distributors thereof. In these cases, the PPER buys products offered by the brand owner and may not have control on the design, product attributes and recommended retail price. The PPER buys products offered for sale by the manufacturer and the manufacturer is responsible for the product performance. Since the manufacturer is otherwise not restricted from manufacturing those products in India or	NA

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
			sale to the retailer is domestic sale, would all such purchases qualify as locally sourced, or would the goods imported by the "brand" be considered as "imported". Where the manufacturer is supplying through a distributor(s), determining whether a product is locally manufactured or imported may become practically difficult. Also, at a different level, where value addition in India is limited to packing and making restricted changes, there may be challenges to determine if product is locally manufactured or imported. While the purpose of establishing sourcing norms in the short run is understood, in the long run, the aim of the Government has to make sourcing from India a natural choice through focus on quality development, cost rationalization and ease of compliance.	import them, it would not be practical to impose restrictions on the PPER who retails them. *(These products referred to as "third party branded" products)* In case the PPER is involved in direct / indirect manufacture of products or sale of unbranded food products, then on such products, a local sourcing mandate of 50% seems feasible. *(These products referred to as "Self-branded products")* Distinction of branded and unbranded can be done in line with clauses 2(a), (b) and (c) of the policy under SBRT. By segregating the products categories into third party and self-branded, one is able to hold the PPER responsible for only those articles for which they have complete control on the sourcing / manufacturing process. Such a mandate will make compliance easier to monitor. By setting a higher local sourcing mandate on the self-branded products, the PPER is restricted from selling cheap imports.	

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
4	How will retail sale under MBRT be restricted to States that have agreed to open front end retail	Not Applicable.	Since e-commerce is an extension of the regular retail sales channel, the restrictions therein should equally apply; else it could be seen as a back door entry. Additionally, the current regulation under MBRT also restricts the stores to be set up in certain cities within the state. This may ALSO have to be enforced. However, these restrictions severely restrict the purpose with which an e-commerce platform be opened by a Multi brand retailer. The restrictions under the MBRT policy need to re-visited and the policy of allowing states to permit or not needs to be re-looked at.	No restriction on the distribution and sale of products.	NA
5	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?	As in the case of SBRT, up to 49% is allowed under the automatic route and anything in excess of that needs to be routed through DIPP / FIPB. Since 100% FDI is allowed in SBRT, this being a channel of distribution, no distinction is needed and no additional caps suggested. All Retailers having SBRT approval should be allowed to set up e-commerce distribution	In line with the regulations for MBRT, no automatic approval should be permitted. All Retailers qualifying to retail under the regulations for MBRT should be allowed to sell through e-commerce platform, without the need for additional approval.	Entry only under the approval route.	NA

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
		networks without the need for additional approvals.			
6	What are likely benefits to Indian economy particularly in terms of a. FDI inflows (amount) b. Additional employment (numbers) c. Back-end infrastructure (amount) d. Efficiency (e.g. lower price to customers, higher price to producers / manufacturers, ease of operations etc.)	The advantages of e-commerce trade can be said as accruing to : - **"Seller"**: Provides additional channel of sales and helps create nation-wide distribution overnight with minimal effort on the ground. Such a channel would be cost efficient beyond a certain size and will do away with "brick & mortar" store in smaller town's thereby overall increasing consumer penetration but on a profitable basis. Investments on the platform may not yield much FDI and additional employment will be generated in the supply chain functions (more low end job creation, either directly or contractual). Setting up of e-commerce platform will help customers address their problems more efficiently and should vastly improve customer satisfaction. Provides smaller Indian brands to tie up with collaborators and set up new ventures to start and sell online directly,	The advantages of e-commerce trade can be said as accruing to : - **"Seller"**: Provides additional channel of sales and helps create nation-wide distribution overnight with minimal effort on the ground. Such a channel would be cost efficient beyond a certain size and will do away with "brick & mortar" store in smaller town's thereby overall increasing consumer penetration but on a profitable basis. Investments on the platform may not yield much FDI and additional employment will be generated in the supply chain functions (more low end job creation, either directly or contractual). Setting up of e-commerce platform will help customers address their problems more efficiently and should vastly improve customer satisfaction. Provides smaller Indian brands to tie up with collaborators and set up new ventures to start and sell online directly,	The advantages of e-commerce trade can be said as accruing to : - **"Seller"**: Provides additional channel of sales and helps create nation-wide distribution overnight with minimal effort on the ground. Such a channel would be cost efficient beyond a certain size and will do away with "brick & mortar" store in smaller town's thereby overall increasing consumer penetration but on a profitable basis. Investments on the platform may not yield much FDI and additional employment will be generated in the supply chain functions (more low end job creation, either directly or contractual). Setting up of e-commerce platform will help customers address their problems more efficiently and should vastly improve customer satisfaction. Provides smaller Indian brands to tie up with collaborators and set up new ventures to start and sell online directly,	NA

Sl No	Question	Type A (Single Brand E-com)	Type B (Multi Brand E-com)	Type C (Pure Play E-com)	Type D (Market Place E-com)
		without need to set up stores. - **"Consumer"**: A lot of consumers who do not access to specific products, due to lack of distribution have access to buying products and services. This enhances consumer choices and will therefore elevate level of customer service across the spectrum. Increase in competition along with savings to the seller should help in driving costs lower thereby making it cheaper for consumers to buy. - **"Government & Others"**: Since this is an additional channel of sales, this would automatically create new jobs, especially in supply chain industry. Expansion in size of retail helps in higher incidence of tax and collection thereof.	without need to set up stores. - **"Consumer"**: A lot of consumers who do not access to specific products, due to lack of distribution have access to buying products and services. This enhances consumer choices and will therefore elevate level of customer service across the spectrum. Increase in competition along with savings to the seller should help in driving costs lower thereby making it cheaper for consumers to buy. - **"Government & Others"**: Since this is an additional channel of sales, this would automatically create new jobs, especially in supply chain industry. Expansion in size of retail helps in higher incidence of tax and collection thereof.	without need to set up stores. - **"Consumer"**: A lot of consumers who do not access to specific products, due to lack of distribution have access to buying products and services. This enhances consumer choices and will therefore elevate level of customer service across the spectrum. Increase in competition along with savings to the seller should help in driving costs lower thereby making it cheaper for consumers to buy. - **"Government & Others"**: Since this is an additional channel of sales, this would automatically create new jobs, especially in supply chain industry. Expansion in size of retail helps in higher incidence of tax and collection thereof.	
7	What should B2C e-commerce encompass – a. Goods b. Services c. Intellectual Property	E-commerce should encompass Goods & Services, but the distinction should be based on the IP created / used in the process.	E-commerce should encompass Goods & Services, but the distinction should be based on the IP created / used in the process.	E-commerce should encompass Goods & Services, but the distinction should be based on the IP created / used in the process.	NA

Annexure 2

Proposed Rules for FDI in PPER

Particulars	Condition
Percentage of FDI Cap / Equity	51%
Entry Route	Prior Government Approval
Products allowed to be sold	No restriction on sale of any products
Minimum Investment	No Limit
Investment Mandate in Backend	No Limit
Sourcing Mandate	Goods sold will be segregated into two categories : ***Third Party Branded Products*** A product will termed third party branded product if : a. The products are locally purchased from the manufacturer (owner of the actual "brand") or any distributor of that brand appointed by the brand owner. b. The product is sold under the same brand name internationally, i.e., products that are sold under the same brand name in one or more other countries. c. Products are branded during manufacturing process. d. In case of products that are not sold by the manufacturer / brand owner outside India, the same should be manufactured in India. All other products will be called ***Self-branded products.*** Sourcing of a minimum of 50% of self-branded products should be done locally. *(Appropriate time frame may be described for this compliance)*
Distribution Restriction	No restriction. Goods can be shipped to any place within India or exported. *(subject to other restrictions as may apply on exports)*

Additional Compliance

Since e-commerce retailers are able to reduce the cost of distribution through savings in rents, staffing cost etc., they are able to pass on these savings to the consumers in the form of discounts. However, excessive discounting has the ability of suppressing competition, especially if done deliberately. It may therefore be essential to keep track of such practices. Suitable amendments in various Acts may be needed to ensure that such data is made available by PPERs and which can be used to determine any practices that may tantamount to "predatory pricing" as defined under the Competition Act, 2002.

It has to be borne in mind that the risk posed by e-commerce retailers through excessive discounting is higher than those posed by regular retailers since they are able to communicate and garner orders from a much larger consumer base at a single time. Therefore additional conditions to safeguard retailers against such a practice may be needed which are not in place for MBRT.

Subject: FDI in E-Commerce
To: ahmed.i@nic.in

Date: 01/30/14 06:09 PM
From: Anand N <anandn26@gmail.com>

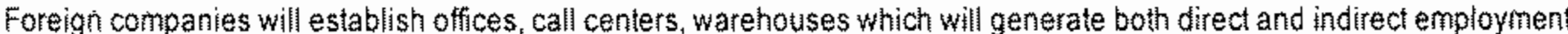
Should FDI be allowed in B2C e-commerce?

Yes. FDI in B2C e-commerce should be allowed. It will benefit people as they can buy foreign goods easily.

Should FDI be opened for all products or only for non-food products?

Only for non-food products. I don't think people will buy food products through online.

What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?



Foreign companies will establish offices, call centers, warehouses which will generate both direct and indirect employment.

Areev

Dear Sir,

I have read the discussion paper on allowing FDI in E-Commerce and following is my feedback on the same:

1. **Should FDI be allowed in B2C e-commerce ?**
   No it should not be allowed in inventory based models due to various cons mentioned in the discussion paper. Already existing business of E-Bay (since 2004) and Amazon (since June 2013). Both have written permission from the Govt of India to operate the marketplace model in India. Also in marketplace model US $ 2.5 billion has come into Indian e-commerce companies over the last 3 years.

2. **Should it be open for all products or only for non-food products?**
   It should not be allowed at all

3. **Should a limit for minimum capitalization be laid down?**
   It should not be allowed at all

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**
   It should not be allowed at all

5. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**
   It should not be allowed at all

6. **What are likely benefits to Indian economy particularly in terms of-**
   - **FDI inflows (amount)** In no way can we expect beyond US $ 100 to US$ 150 million over 3 years from only one inventory e-comm player
   - **Additional employment (numbers)** -- there will be high net unemployment basis the cons stated in the discussion paper. <u>It will create small employment of 3,000 over 2/ 3 years but unemployment to 40 to 50 million</u>
   - **Back-end infrastructure (amount)** -- the above mentioned US $ 100 million to US$ 150 million will be cumulative over 3 years including infrastructure
   - **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)** Let's not live in a fool's paradise. On the contrary the social problems due to the unemployment will be humongous. . It will also cause huge

income disparities. India does not have a social security system as in the US. Can India afford the problems??

ARKAY & ARKAY

Chartered Accountants

M :+91 9910124927 , +91 9818014509 | T :+91 11 2735-7350 , +91 11 2735-7030 | F : +91 11 4706-3446
www.arkayandarkay.com | info@arkayandarkay.com | 1101, KLJ Towers North, NSP, New Delhi -110034

To,
The Department of Industrial Policy and Promotion
Ministry of Commerce & Industry
Udyog Bhavan
New Delhi 110011

Re : Discussion paper on eCommerce in India

Sirs,

With due reference to your discussion paper on the ecommerce industry in India, more particularly FDI in B2C ecommerce we beg to submit our feedback in the required format.

It is our hope that the DIPP shall take a measured view on this potentially revolutionary industry model.

Yours Sincerely,

Pallav Pradyumn Narang

Partner
Arkay & Arkay, Chartered Accountants
www.arkayandarkay.com

(Enclosures : Opinion on DIPP queries in the relevant format)

S.No	Question	Pros	Cons
1	Should FDI be allowed in B2C ecommerce?	While barriers to entry and cost of setting up in the B2C ecommerce space are lower than traditional brick and mortar business of comparable sizes the cost of customer acquisition per customer is much higher given the opaque nature of the world wide web and the intense competition among ecommerce businesses. This necessitates large expenditures of a non capital nature in order to attract and retain customers.	Smaller ecommerce companies funded by domestic businesses will not be able to survive in the same space as capital rich behemoths that will enter the market
2	Should it be open for all products or only for non-food products?	In our opinion, the opening up of FDI to all sectors (food and non-food) shall bring the benefits of the tremendous experience and expertise in SCM to the food industry in India. The loss of perishable goods is a major problem that a country like India cannot afford to ignore, therefore any capital investments and advancements through technology in such sectors should be encouraged.	
3	Should a limit for minimum capitalization be laid down?	One of the chief characteristics of ecommerce is the ease with which a small player can enter and potentially	

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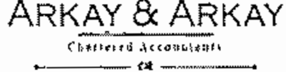
		disrupt existing markets and dominant players with innovative business models. The imposition of capitalization limits shall severely limit the ability of such entrants to be able to raise FDI when required.	
4	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	It has been the stated policy of the government to encourage local artisans and manufacturers while formulating industrial policies. The current policies for single brand retail also provide for certain "preffered" sourcing limits. While we may not agree with such sourcing limits, the lack of such limits in ecommerce will create an incongruous situation with respect to regulations.	
5	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	In our opinion, ecommerce stores do not pose any element of risk to traditional kirana and "mom and pop" enterprises that exist in ever corner of this country. To limit FDI to only MBRT states be an exercise in futility as such limits can be bypassed with a multi layered corporate structure.	
6	What should the entry routes and caps be in FDI in B2C e-commerce	In our opinion, FDI in ecommerce should be fully automatic up to 100% of the	



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	companies? Should it be automatic up to 50%?	authorised and paid up share capital in the company.	
7	What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)	-NA-	
8	What should B2C e-commerce encompass- -Goods -Services -Intellectual Property	From the best of our understanding, the provision of services online has not been considered to be under the purview of ecommerce regulations thus far. However, in the interest of clarity it would be preferred if all investments in trading in goods and services (including IP services) were to be allowed under the automatic route	

Ph.: 3235247, 6611298
2334599, 6611598

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Sales Office : L-3064, 2nd Floor, Surat Textile Market, Ring Road, SURAT-2.
Sales Office : 1031-33, Ambaji Market, Kamela Darwaja, Ring Road, SURAT-2.

Ref. No.: Date : 25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	YES as it will: a) rovide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b)	NONE

For, BANARSI SILK MILLS

PROPRIETOR

॥ श्री गणेशाय नमः ॥

Ph.: 3235247, 6611298
2334599, 6611598

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Ref. No.: Date :

		ncourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) reate additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have	E-commerce players with FDI in inventory led processes can be	Location based restriction is against the very tenets of E-

For, BANARSI SILK MILLS

PROPRIETOR

|| श्री गणेशाय नमः ||

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	agreed to open frontend stores?	restricted from establishing physical front end stores in states that do not support FDI in MBRT.	commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores)	None

For, BANARSI SILK MILLS

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by 2020 (IAMAI-KPMG report, 2013).

4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers.

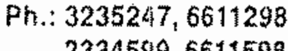
The e-tailing model disrupts traditional distribution
supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the
business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers
to buy the desired product at the desired price point (IAMAI-KPMG report, 2013).

The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers
in Tier 2 and Tier 3 cities. Industry players also estimate that
as the E-commerce reach increases, a large portion of online
shoppers (more than 60 - 70 percent) would come from beyond the top 8

For, BANARSI SILK MILLS

PROPRIETOR

|| श्री गणेशाय नमः ||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		metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

For, BANARSI SILK MILLS

PROPRIETOR

Subject: FDI in B2C ecommerce - comments
To: ahmed.i@nic.in

Date: 01/30/'4 05:54 PM
From: Pravin J <pj@beingpractical.com>
Reply-To: pj@beingpractical.com
Sender: findpravin@gmail.com

Sir,

Below are my comments on FDI in eCommerce. Thanks for the opportunity to share the same.

1. Should FDI be allowed in B2C e-commerce?

Yes

2. Should FDI be opened for all products or only for non-food products?

Yes. All Products.

3. Whether there should be a limit on minimum capitalization?

Nopes. Ecommerce businesses are planned for growth. There should not be any capitalization. Small startups like Flipkart (in 2008) have grown to be segment leaders. It should be open to all businesses.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

There should be no limit. End users want products of their choice irrespective if it is manufactured in India or outside. The market should drive innovation, it should be non restrictive.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Unless the ownership is > 50%, it should be free to enter. For more than 50%, the government should be notified, but no restrictions should be imposed.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

For eCommerce, there should be a fixed National Level Tax that will be uniform irrespective of where the business is located or the customer is located.

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

Lots of benefits, ecommerce will drive internet adoption in India. The convenience of ordering anything online gives lots of untapped user base an opportunity to buy anything at doorstep. Improvement in other sectors and growth will also lead to employment in Logistics, Customer Support, Technology and so on.

Telecom companies have invested so much in infrastructure. Their revenues will increase as more data is consumed. Going forward, also this will be one of the core reasons for everyone to own a smart phone and improvement in penetration & also speeds of Internet across the country. Today we are unfortunately among the last set of countries on both.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

Open market, driven by consumer interest. No restrictions should be applied / imposed.

Subject: DIPP discussion on FDI in E-Commerce
To: ahmed.i@nic.in

Date: 01/29/14 05:59 PM
From: Sajeed Munshi <sajeedmunshi@bizzna.com>

Respected Sir,

We have gone through a discussion in a paper in regard to allowing FDI in E-Commerce and following is our feedback:

1. 1. **Should FDI be allowed in B2C e-commerce ?**

It must not be allowed in inventory based model. It is already allowed in the marketplace model where E-Bay and Amazon are operating since last 9 and 1 years respectively. Also US$ 2.5 billion has come into Indian e-commerce companies over the last 3 years.

2. **Should it be open for all products or only for non-food products?**

Question does not arise. We must not allow at all.

3. **Should a limit for minimum capitalization be laid down?**

Question does not arise. We must not allow at all.

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**

Question does not arise. We must not allow at all.

5. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**

Question does not arise. We must not allow at all.

6. **What are likely benefits to Indian economy particularly in terms of-**

- **FDI inflows (amount)** Let's not fool ourselves. We cannot expect beyond US $ 120 million to US$ 130 million over 2 to 3 years from only one inventory e-comm player

- **Additional employment (numbers)** -- Unemployment created is much more than employment created. There will be 3,000 new jobs but loss of 40 to 50 million jobs over the next 2 to 3 years.

- **Back-end infrastructure (amount)** -- US $ 120 million to US$ 130 million will be cumulative over 2 to 3 years (including infrastructure)

Regards

Sajeed Munshi

Subject: E-commerce - Why it SHOULD be permitted and encouraged to the fullest
Date: 01/30/14 10:22 PM
From: Karthik Reddy <karthik@blumeventures.com>
Reply-To: Karthik Reddy <karthik@blumeventures.com>
To: ahmed.i@nic.in <ahmed.i@nic.in>
Cc: Karthik Reddy <Karthik@blumeventures.com>

Dear Sir

Thanks for sharing the consultative paper on FDI in e-commerce in India. It captures all the viewpoints.

We, as India's leading micro-venture funds and proudly with 100% domestic capital to date (though its a modest sum of Rs.100cr in total) are believers in e-commerce and have at least 6-8 seed-stage investments in this space.

As always, the benefits to the customer have been understated. If it were not beneficial in more ways than one, the sector wouldn't have grown by large multiples. There are several underlying factors that drive efficiencies and these are hugely beneficial to an economy that seems to perpetually run at hyperinflation nowadays.

Answers for some of the questions posed:
* YES, FDI should be allowed in B2C e-commerce
* It should be allowed for food and non-food. There are already interesting hybrid models like Aaramshop which simply serve as a marketplace for customers and offline merchants and this is the creative aspect of ecomm that will eventually dominate in India.
* What does minimum capitalization have to do with it? All forms should be encouraged and that's what allows smaller players to innovate and disrupt oligopolies.
* Whatever limits are there for offline retailers and their sourcing should be applied to online as well.
* Yes - automatic route upto 50%
* E-commerce companies that have foreign investment will not retail into states that don't allow MBRT unless its single-brand e-commerce. (the irony is that all these loopholes will create some other new business model where a non-FDI co will be set up and will be a wholesaler anyhow and they will happily ship to these states - as is done now)
* B2C ecomm already covers services and intellectual property OR at least both these are rampant already and seem to be permitted (retail was the roadblock to goods) - we need to add goods.

Counter arguments to the NEGATIVES raised in the discussion paper:
- Small time shopkeepers said the same when there was Large Format retail in India. What does domicile of investment have to do with it. The market is efficient. It will innovate new business models. How many new brands and shop owners have domestic brands created thanks to franchising etc? That trend will continue. Several e-comm brands now

have an offline presence.
- Scale of ecomm players takes a LONG time to establish. In the interim, they have to deal with front-ending a lot of costs like supply chain and warehouses and the gross margins are affected by price comparison-led discounts and shipping costs etc. There is no question of easy advantages with offline retail in that regard.
- Captive or not, collective pvt investment in warehouses, shipping etc will create enormous opportunities and rationalize inefficiencies in cities and increase efficiencies in long-distance freight
- Indian investors have no conviction in regular retail, leave alone large format e-commerce plays. If we wait around for Indian investors to scale to meet the demand and the efficiency required by the Indian customer, we will waste a precious decade.
- Storekeepers or kirana stores will get integrated into the effort. Some great technologies are bridging this and they're like mini-warehouses on the edge of the supply-chain network. Private investment is far more capital efficient than this debate and it will have to employ the same resources if it has to be profitable.

Thanking you

Yours sincerely
Karthik Reddy
Managing Partner
Blume Ventures
Mumbai, India

CAIT response to DIPP Paper on E-commerce

Reading through the DIPP paper it is quite clear that the question of FDI in e-commerce is mostly concerned about e-tailing and IP-related issues rather than the model mostly being followed - the marketplace model. The outcome of the paper should be confined to e-tailing rather than disrupt the status quo of the marketplace.

1. **Should FDI be allowed in B2C e-commerce?**

Pros

There is no positive by allowing FDI in e-commerce. It is an attempt by the same global forces who have lobbied for entry for multiband retail in India. Now through back door they are trying to enter Indian market place through another channel. They are giving a logic that FDI in e-retail will help generating employment, will lead to multiplier effect in manufacturing and investment into logistics etc.

Cons

a. There is grave concern that FDI in B2C e-commerce will allow large inventory-based players to set up online stores which could potentially impact the Indian SME & Self organized retail sector, which generates employment for 40% of India's population.

b. The global retail giants like Wal-Mart, Tesco, Amazon etc based on their global business experience understands that inorder to control the market in current scenario, the business should be a mix of both online and offline format. Hence it is these companies and other similar companies who will try to enter Indian market in both format and secondly with the e-commerce route the same retail giants can reach to far flung areas of India, despite having no local investment made by these companies in such areas. But with the penetration of deep e-commerce they are sure to wipe out local mom and pop shop.

c. The argument for allowing FDI in B2C e-commerce to support the logistics infrastructure sector is fallacious due to the following reasons:
   a. India already allows 74% automatic FDI in the air transport sector
   b. 100% FDI is allowed in the logistics sector[1]
   c. The Indian logistics industry is growing at 20% YOY[2]

d. The concerns of local investors in B2C e-commerce ventures in wanting to raise investments/sell stake to grow their ventures is genuine. Despite FDI presently not being allowed. Investments of approximately INR 1000 crores have already entered the market. Therefore, FDI may not necessarily be the solution. For this segment, capital market options should be examined.

2. **Should it be open for all products or only for non-food products?**

Pros

We don't see any Pros at all

[1] http://www.ebtc.eu/pdf/Logistics_Industry_Global_and_Indian_Perspectives.pdf
[2] *ibid*

Cons Opening FDI in B2C e-commerce for all products including food products,without adequate quality restrictions, could see low quality items flooding the market. An example of this is the CFL light bulb market in the mid-1990s when the market was flooded by cheap contraband products from China.Eventually, duty on branded imported products was reduced and brands such as Philips and Sylvania could continue growing their market share.

3. **Should a limit for minimum capitalization be laid down?**

Pros The advantage of minimum capitalization thresholds will allow only serious players to enter the e-commerce with a long-term perspective of doing business in India.
Cons No comments.

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**

Pros If at all allowed, FDI should be restricted to <u>high-value food/non-food productsnot normally manufactured in India</u>. And if this is in fact the case there should not be any restrictions vis-à-vis local sourcing.
Cons The government needs to ensure that retailers do not circumvent MBRT restrictions already in place.

5. **How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?**

Pros Those with MBRT license should only be allowed to sell B2C in those states where they have opened frontend stores.
Cons No comments.

6. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**

Pros

If at all allowed, FDI/FII should be restricted to food/non-food, <u>high-value productsnot normally manufactured in India</u> and initially capped at 26%.

Cons
No comments.

7. **What are likely benefits to Indian economy particularly in terms of-**
   a. **FDI inflows (amount)**
   b. **Additional employment (numbers)**
   c. **Back-end infrastructure (amount)**
   d. **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)**

Pros
FDI in B2C e-commerce may lead to better choices for consumers and some improved levels of back-end efficiency. However there may not be significant investments after the initial investments by a few global giants who may view the opportunity to build a long-term based in India.

Cons
According to the AT Kearney report quoted in the DIPP discussion paper, "India, the world's second most populous country at 1.2 billion, does not make the Top 30, because of low internet penetration (11 percent) and poor financial and logistical infrastructure compared to other countries".

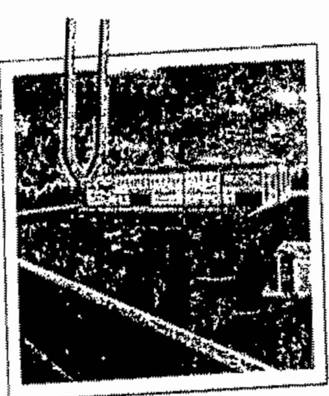
Allowing FDI in B2C e-commerce will not impact low internet penetration nor financial or logistical infrastructure, as FDI is already allowed in all the three industries. Since cell phone penetration is much higher compared to internet, a better financial regulatory environment may do more good in promoting m-commerce.

8. **What should B2C e-commerce encompass-**
   a. **Goods**
   b. **Services**
   c. **Intellectual Property**

Pros
All three. The industry should not be bifurcated.

Cons
No comments.

Ends



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January 30, 2014

The Director
The Department of Industrial Policy and Promotion
Ministry of Commerce and Industry
Udyog Bhawan
New Delhi - 110 001

Dear Sir,

Sub: Views on the Discussion Paper released by the Department of Industrial Policy and Promotion ("DIPP") on "E-commerce In India"

We refer to the Discussion Paper issued by the DIPP on E-commerce in India. In this regard, we have provided our comments for your kind consideration as **Annexure 1**.

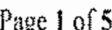
We would be pleased to provide any clarifications that may be required in connection with our comments provided.

Yours faithfully,

For Decathlon Sports India Private Limited

DECATHLON SPORTS INDIA PVT. LTD.

Enclosures: As above



DECATHLON SPORTS INDIA PVT. LTD.

The Director
Department of Industrial Policy and Promotion

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Annexure 1

Sl. no	Question	Comments from Decathlon Sports India
1	**Should FDI be allowed in B2C e-commerce?**	As mentioned in the background to the subject discussion paper, e-commerce sector has witnessed significant growth in recent times. The e-commerce market is expected to continue to grow year on year at the rate of 34 percent. Further, according to a research report[1], it is learnt that e-commerce companies (ie inventory led models) are in dire need of funds and may require significant funding to the tune of USD 200 million to get to profitability, while others (eg marketplace players) may require USD 80-100 million. Opening up of FDI in e-commerce could lead to the development of supporting ecosystem such as Internet Service Providers, Network provider, Payment Gateways, Software Architects, Content providers, online advertiser, warehousing agents, logistics provider, call centres, etc. E-commerce sector is also helping to overcome the geographical divide between urban cities and smaller towns by making available branded and quality products to all. Further, e-commerce companies are working towards providing more online content in regional languages to tap the niche consumer base. It would also provide consumer the convenience to shop at any time and thereby also reduce the stress on infrastructure in large cities. Besides the direct employment opportunities that are created by e-commerce companies, the sector has also encouraged many supporting and ancillary industries to ramp up their workforce in order to meet the outsourced requirements of e-commerce companies on the core functions as well as front end and back end support. Based on the industry size and experience in other international markets, India is expected to create an additional 1 Million direct jobs in e-tailing and another 0.5 million indirect jobs by 2020[2]. Given all of the above, we believe that allowing FDI in B2C e-commerce sector will be a progressive step which will benefit the Indian consumer and economy at large. Separately, we also believe that e-commerce in 'single brand retail'should be viewed differently from e-commerce in general. Since 'single brand retail' by brandowners (in the physical form) is already under the permitted list of sectors with 100% FDI, any e-commerce activities by such players, is just a mere extension of their physical store format.

[1] IAMAI- KPMG report on e-Commerce (2013)
[2] IAMAI- KPMG report on e-Commerce (2013)

	.	Ofcourse, necessary conditions prescribed under single brand retail (such as sourcing, etc), could be applied to the e-commerce format as well. We therefore strongly believe that '**e-commerce in single brand retail**' is clearly a segment that deserves treatment that's consistent with Government's overall 'permissive' approach to single brand retail as such.
2	**Should it be open for all products or only for non-food products?**	Indian retail market is still driven by unorganized retail format. As per research reports, it is understood that penetration of organized retail is as low as 8 percent of the total retail market. Further, online retail comprises only 1 percent of total organised retail market. In the products space, emerging online markets in India and China are largely concentrated around products with higher degree of standardization, such as, cosmetics, books, audios & videos, sports products, apparels, etc. Contribution of grocery and food products to e-tailing is comparatively on a lower scale. Without commenting on the food products space, we strongly believe that e-commerce for '**standardised and fast moving consumer products**' will provide a more accelerated effect, from a consumer usage and benefit standpoint.
3	**Should a limit for minimum capitalisation be laid down?**	The amount of capital required varies depending on the scale, size and category of products in which the investment is being made, the different business models being followed such as inventory model vs market place model, SBRT vs MBRT players, need for investment in back-end infrastructure, etc. It therefore appears difficult to provide prescriptive capitalisation norms. From the view point of existing single brand retail players standpoint who are looking at expansion, we believe that capitalisation for any extended e-commerce activity should not be an issue, given the substantial investments / capital commitments that are anyway to be made for the core 'physical store' format. So any e-commerce related investments/commitments are likely to be incremental.
4	**Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**	Sourcing from domestic manufacturers was introduced in the FDI policy in order to encourage and provide an impetus to local manufacturers (including in the small scale/ handicrafts sector) and to meet the needs of integration between Indian manufacturers and domestic/ global markets. Under the extant FDI policy, sourcing from domestic manufacturers is mandatory for companies operating in SBRT (for investments exceeding 51 percent) and MBRT sectors. Keeping in mind the intention of introducing sourcing norms, the existing sourcing conditions as applicable to the physical retail trading models could be extended to B2C e-commerce sector as well.

5	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	We don't have any comments to offer on this question
6	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50 percent?	In our view, while determining the FDI entry routes for e-commerce, Government should consider the prevailing FDI Policy for retail and also keep in mind some of the key parameters such as nature of products, nature of business model, etc. For instance, under the existing policy, FDI in single brand retail trading is permitted upto 100 percent under 'approval' route (and upto 49 percent under 'automatic' route). As mentioned above, a similar policy/approach could be formulated in relation to e-commerce sector for single brand retail players, since e-commerce is merely another form of distribution channel which will supplement the physical store channel. Further, opening up of FDI in e-commerce for this category of retailers will not adversely impact any of the unorganised retail segment since they deal with niche or specific products and have different target consumers.
7	What are likely benefits to Indian economy particularly in terms of: (a) FDI inflows (b) Additional employment (c) Back-end infrastructure (d) Efficiency	As mentioned in the background to the Discussion Paper and various research reports, opening of FDI in e-commerce sector is expected to bring in significant foreign investments in India and also generate significant additional employment opportunities. From a Decathlon standpoint, if FDI is opened up in e-Commerce, we expect that our existing investments into the country could increase by 15% and we also envisage that direct and indirect employment opportunities could stand increased by 20% Decathlon is involved in trading of specialized and niche sports products. By opening up FDI in b2c e-commerce, Decathlon believes that it will be in a position to remove the geographical divide and make its range of innovative sporting products available to talented sportsmen in rural and non-metro cities and thereby, contribute to the overall development of sports ecosystem and sporting culture in the country.
8	What should B2C e-commerce encompass - Goods or Services?	'E-tailing' occupies a very nominal share in the Indian retail industry (<1 percent) when compared to that of countries like USA (5 percent), China (6 percent) or Australia (6 percent)[3]. Thus, it is apparent that the Indian e-tail market has scope for abundant growth. While the current statistics show that Indian e-commerce sector is dominated by services (ie mainly travel and ticket bookings, etc), preference for online product shopping has shown an increased trend in the recent past on account of consumer convenience as well as various value added services offered by e-commerce players such as free shipping, product and price comparison, user reviews and demonstration videos, technical support, etc.

[3] IAMAI- KPMG report on e-Commerce (2013)

		The trend of online shopping for products and services is set to see greater heights in the coming years on account of growing penetration of technology facilitators such as Internet connections, broadband and third and fourth generation (3G & 4G) services, laptops, smartphones, tablets, etc and increased acceptance by Indian consumer for various payment approaches such as net banking and prepaid wallets. Given the benefits that are likely to accrue to the Indian consumer and the economy at large, we believe that FDI in e-commerce should be opened up both in respect of product and services. Further, in order to protect the consumer interest, the Government could consider making appropriate amendments in other legislations that may be required such as Consumer Protection Act, Contract law, Indian penal code, etc.

Subject: Feedback on FDI in E-Commerc
To: ahmed.i@nic.in

Date: 02/03/14 02:30 PM
From: Swaraj [Digitronics] <swaraj@digitronics.in>

Dear Sir,

Having gone through the said discussion paper, we would like to submit our feedback for your reference please:

Should FDI be allowed in B2C e-commerce ?

It is already allowed in the marketplace model and US $ 2.5 billion has come into Indian e-commerce companies over the last 3 years. But, inventory based e-commerce should not be allowed due to the stated cons in the discussion paper. AMAZON is already present in the MARKETPLACE model in India since June 2013. eBay which operates only in the marketplace model globally, is also present in India since 2004. Both have permission from the Government of India to operate the marketplace model.

Should it be open for all products or only for non-food products?

Question does not arise

Should a limit for minimum capitalization be laid down?

Question does not arise

Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

Question does not arise

What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

Question does not arise

6. What are likely benefits to Indian economy particularly in terms of-

- **FDI inflows (amount)**At the most it will bring US $ 150million (that too over 3 years) from only one inventory e-commerce player
- **Additional employment (numbers)** -- Some 3,000 to 4,000 jobs will be created but

some 45 million livelihoods will be lost from the SME's who are the backbone of today's economy

- **Back-end infrastructure (amount)** --Some US$ 150 million including infrastructure will do more harm than good. It will also be captive infrastructure and the government will not be able to achieve its objective of creating backend infrastructure

- **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)** --- Indian market is not yet ready for opening up space of e-retail to companies like AMAZON. It will seriously impair small time sellers

DINA CLOTHING COMPANY
10-B Sun Mill Compound Lower Parel West Mumbai – 400 013 T: 2497 0444 F: 2497 0555 E: info@varja in

747

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	**NONE**

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		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

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			products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

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		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

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	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

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25 January 2014

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The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country.	**NONE**

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		b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
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iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have	E-commerce players with FDI in inventory led processes can be	Location based restriction is against the very tenets of E-

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	agreed to open frontend stores?	restricted from establishing physical front end stores in states that do not support FDI in MBRT.	commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores)	None

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		by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8	

		metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property.With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

yebhi.com, myntra.com, utsavfashion.com, bestylish.com, fashionandyou.com, allschoolstuff.com

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts.	**NONE**

		e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	No minimum capitalization should be laid down , as the industry is essentially of first generation entrepreneurs and any min threshold will not be beneficial for Indian small startups	If there is a threshold, the startups who require $1 or 2 mn would not be able to initiate operations
Iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
Vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest a 51% automatic route for FDI in business to consumer E-commerce.	None.
Vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20	None

		warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8	

		metros. (IAMAI-KPMG report, 2013).	
Viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Subject: FDI in e Commerce
To: ahmed.i@nic.in

Date: 01/31/14 06:17 PM
From: jignesh patel <jignesh@fabdeal.com>

img048.jpg (1.3MB) img052.jpg (920kB) img051.jpg (1.0MB) img050.jpg (1.2MB) img049.jpg (1.0MB)

Dear Ahmed,

PFA our feedback on FDI in e Commerce.

Regards

Jignesh Patel

Fab Deal
21st century, Third floor
Ring Road, Surat-2
0261-3321000

– img048.jpg

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21st Century Business Center, E-House, 3rd Floor, Ring Road, Surat-395002.
Ph: 0261 2310231, Email: support@fabdeal.com
www.fabdeal.com

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

The Indian E-commerce Industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and ... of goods and services to both rural and urban consumers and scale as well as reach to small and large

enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

SI No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of	NONE

For Fabdeal

Partner

i

— img052.jpg

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		in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass-	B2C E-commerce should encompass all three: Goods, Services and	Not allowing specific formats of products will create

	-Goods -Services -Intellectual Property	Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

For Fabdeal

Partner

— img051.jpg —

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		The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times	

		to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers	

For Fabdeal

Partner

--img050.jpg--

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V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end Infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies.	None

For Fabdeal

Partner

3

— img049.jpg —

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		b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end Infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the Industry. It should not be restricted on the size but should be applicable to all manufacturers.

For Fabdeal

Partner

2

फेडरेशन ऑफ इंडियन एक्सपोर्ट आर्गनाइजेशन्स
(वाणिज्य मंत्रालय, भारत सरकार द्वारा स्थापित)
FEDERATION OF INDIAN EXPORT ORGANISATIONS
(SET UP BY MINISTRY OF COMMERCE, GOVERNMENT OF INDIA)
NIRYAT BHAWAN, RAO TULA RAM MARG, OPP. ARMY HOSPITAL RESEARCH & REFERRAL
NEW DELHI - 110057 (INDIA) ♦ TEL: +91-11-46042222, 26150101- 04 ♦ FAX:+91-11-26148194
E-mail : fieo@airtelmail.in / fieo@nda.vsnl.net.in ♦ Website: http://www.fieo.org

FIEO/EP/3(6)/2013-14 January 30, 2014

Dear Sir,

Sub: Discussion Paper on e-commerce in India

We welcome the attempt of the Government to initiate discussion on FDI in B2C e-commerce. As mentioned in the Discussion Paper, global B2B transactions comprise 90% of all e-commerce. It means only 10% of all e-commerce transactions are B2C. Our FDI policy is prohibiting FDI in only those 10% transactions and not the 90% B2B transactions. Why do we want to separate that 10% B2C e-commerce retail from rest of the FDI policy?

The e-commerce retailing holds immense benefits for the trade as well as for the consumers. We would suggest that FDI should be allowed in multi brand retail through e-commerce also. The following is the response in the suggested format.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** 1. E-commerce provides economies of scale with wider choices and competitive prices to the consumers throughout the length and breadth of the country. The consumer in the tier 2 /tier 3 city or in rural area, who does not have many choices today, will have the options at his door step. 2. E-commerce will provide immense opportunities to the small businesses/ entrepreneurs/	None

		MSME units to utilize e-commerce platform and sell goods online to larger section of the society, which otherwise he would be unable to do so because of geographical issues. The products of the suppliers/ small businesses/ MSME units etc. will get tremendous exposure, which will result into increasing revenues. 3. MSME will be strongly encouraged by the availability of e-commerce platform. Moreover, global e-commerce players will bring the knowledge of processes which will be beneficial for Indian MSMEs in increasing their efficiency. 4. E-commerce will provide more opportunities to suppliers to export as large number of buyers procure via global e-commerce websites. 5. It will attract investment in the back end infrastructure like warehousing, logistics/transportation services, IT services, shipping services etc. A strong backend infrastructure is vital for any e-commerce platform. 6. It will be huge employment generating activity. 7. E-commerce activity will be transparent in financial transactions. The supplier will be able to know his inventory at real time basis and can accordingly plan his production schedule.	
Ii	Should it be open	At the moment, is may be open only for	

	for all products or only for non-food products?	non-food products.	
Iii	Should a limit for minimum capitalization be laid down?	B2C e-commerce is in nascent stage in India. The companies are in initial stages and hence no minimum capitalization requirement should be there.	If a minimum threshold criteria in there, companies which require small capital may not be able to avail FDI and will have to grow to a particular level before getting FDI.
Iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	We may follow the domestic sourcing conditions as in FDI in Multi Brand Retail Trade i.e. 30% of the value of procurement.	The limit should be from domestic manufacturer irrespective of the size cf the supplier.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	We may devise the process by which delivery of the goods are restricted in the states, which have not opened up FDI in MBRT. While ordering goods via e-commerce platform, the system may disallow the address in a particular state/ city/ pin code.	The fundamental principle of e-commerce is to provide access of products to the consumers irrespective of geographical boundaries. Restricting e-commerce is against the very tenets of ecommerce.
Vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to	Despite opening FDI in MBRT, there is little response from the global retailers. FDI should not be opened only for the sake of opening but to get impressive FDI. It is suggested to allow FDI upto 100% be	None

	50%?	allowed in B2C e-commerce out of which, upto 51% under automatic route and beyond that under Government approval.	
Vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) N.A. 2) Currently, the inventory based consumer e-commerce model alone provides direct employment to approximately 40,000 people and is estimated to create 1 Million direct and another 0.5 Million indirect jobs by 2020. (IAMAI-KPMG report, 2013) 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-	None

		commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
Viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	It should encompass all three i.e. Goods, Services and Intellectual Property. It will be difficult to distinguish between the three with the advent in technology.	Disallowing certain formats will create un-competitiveness for the entrepreneur of that particular sector.

Thanking you,

Yours truly,

(Ajay Sahai)
Director General & CEO

Feedback from
Federation of Indian Micro and Small & Medium Enterprises (FISME)

No.	Question Pros Cons	Pros	Cons
i.	Should FDI be allowed in B2C e-commerce?		No. The impact of e-commerce on existing businesses should be studied and then a decision should be taken. Till, then no liberalization should be attempted as livelihood of millions of people are involved.
ii.	Should it be open for all products or only for non-food products?		It should not be opened for any product.
iii.	Should a limit for minimum capitalization be laid down?		n/a
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?		n/a
v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?		n/a
vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?		n/a
vii.	What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)		Amount of FDI in commerce is always going to be very small. However, the displacement cost could be huge for social and economical life of India. There is hardly any evidence that ecommerce has generated more jobs that it killed.
viii.	What should B2C e-commerce encompass- -Goods -Services -Intellectual Property		In present format we mean 'Goods'

Subject: Answers to Questions put forth on FDI i E-Commerce
To: ahmed.i@nic.in

Date: 01/30/14 04:59 PM
From: Gaurav Jain <gauravgjain@gmail.com>

1. Should FDI be allowed in B2C e-commerce?

Yes Absolutely. It will make products & services more efficient and lower prices. It will bring foreign investment into the nation and create jobs. These are exactly the things we need. |

2. Should FDI be opened for all products or only for non-food products?

FDI can be opened in phases, it does not have to be completely opened at once. Begin with some and not the other. non-food would be the most sensible to begin with as it would allow businesses to put logistics in place without having to worry about perishables as well as the legal buying aspects for food stuffs in each state.

3. Whether there should be a limit on minimum capitalization?

A minimum capitalization achieves nothing except play into the hands of larger players. In any case FDI from foreign players will only come from large players, therefore minimum capitalization as long as its reasonable and not to the detriment of smaller players is not a problem.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

Absolutely. I think there should be a limit as there are plenty of products that can be sourced from the local market and probably already are. To begin with a local sourcing limit of 15% for year 1 and 2. 20% for year 2-3. 25% from thereon upto a maximum of 35%

This should also be considered adjustable and a lower or slightly higher limit should be acceptable depending on industries and the ease of material being available locally.

In addition there should be a mandatory requirement to have Indian suppliers for things such as Information technology services, advertising etc. In this way it makes sure Indian infrastructure sees growth and improves beyond the immediate industry the venture is involved in.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Yes. If a foreign player wishes to make a large scale investment, forcing them into minority ventures will only create friction and make the business unstable in the long run. This has been seen in almost every industry be it Media, Automotive. They should certainly be allowed to be in the driver seat and this will also encourage people to invest in India.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

This is indeed tricky. However it is relatively simple as the business owners will be able to restrict shipping to certain states on a case by case basis and people visiting the site would be informed of this before making their final payments online. The Policy in general will def have to be revised as it is ridiculous to expect part of the country to have access too goods at a certain price while others do not.

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

As mentioned before, this would first and foremost bring in investment.

Secondly these businesses would need to hire people some of whom can be hired from other companies but in most cases there will be a need to train a multitude of people. So not only will it create jobs but it will also raise the caliber of people as the standards expected will be higher.

Investments will be made in systems, processes and of course infrastructure. Locations where these businesses set up will reap the immediate rewards as the ecosystem will improve. However once the businesses are up and running the benefits will spread along with market growth.

There will be a big investment in technology as these ventures thrive on technology and we will see improvements there.

Additionally, there will be growth for related businesses such as Advertising Agencies, Marketing, Support, Logistics, IT etc which will be needed constantly.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?
It should cover all these avenues, however it should be eased into once the proper framework has been established to protect not only the businesses but also the consumers. Goods are the easiest to source, services are harder but are also the most economically important and rewarding for all the stake holders (the business, the govt, the end consumers, society at large)

With Kind Regards,
Gaurav Jain

Subject: FDI in ecom
To: ahmed.i@nic.in

Date: 01/30/14 06:58 PM
From: Janhavi Parikh <janhavip@aurality.net>

1. Should FDI be allowed in B2C e-commerce? YES

2. Should FDI be opened for all products or only for non-food products? For all products

3. Whether there should be a limit on minimum capitalization? There should be no limit

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?There should be no limit

Best,

Janhavi Parikh
Founder/CEO, Giftery
https://giftery.in/

Phone: +91 99201 47037

Subject: IAMAI Feedback on the DIPP Paper
To: ahmed.i@nic.in
Cc: Subho Ray <subho@iamai.in>
Date: 01/30/14 05:06 PM
From: Kalyan Biswas <kalyan@iamai.in>

Annexures-DIPP Final Submission.pdf (261kB) e-CommerceKPMG-1.pdf (3.1MB)
FDI in Consumer Ecommerce_v1-3.pdf (168kB)

To
Shri Ishtiyaque Ahmed
Director, Department of Industrial Policy & Promotion
M/o Commerce & Industry
Udyog Bhawan, New Delhi

Dear Mr Ahmed,

Sub: IAMAI Feedback on the DIPP Paper

With reference to the DIPP Paper mentioned in the caption, on behalf of the association, I would like to draw your kind attention to a) the Paper titled "**A Position Paper on FDI in Consumer Ecommerce in Goods**" Submitted to DIPP on 20 March 2013 and b) A report by KPMG titled "e-Commerce Rhetoric, Reality and Opportunity" submitted to the DIPP by IAMAI on 1 July 2013 by the association. As a preamble to our response to the current DIPP paper, we are pleased to share these papers once again with you.

On the DIPP paper, we have reached out to our members who are engaged in the ecommerce business, and their response to the 8 questions raised in that paper are summarized below. The detailed feedback from each member is included in Annexure 1 & 2.

1. *Should FDI be allowed in B2C ecommerce?* Most of our members in the ecommerce business would like to see the sector opened to FDI for various reasons that are mentioned in Annexure 1 of this document.

   Only one company has drawn attention to the possible negative impact of FDI on small Indian players.

2. *Should it be open for all products or only for non-food products?* The consensual view was that it should be opened to all products including agricultural products. But for agricultural products and SME sensitive products a minimum percentage of domestic sourcing should be mandated. Only one company suggested that the supply chain needs to mature before FDI linked ecommerce in agricultural produce is allowed. Annexure 3 includes a rationale for opening up agricultural produce.

3. *Should a limit for minimum capitalization be laid down?* Opinion was not unanimous on this issue. Most believe that there should not be any limit on minimum capitalization, since a threshold would harm the smaller players who need $1-2 million USD. Some others believe that there should be a minimum threshold. For details of submission please see annexures 1 and 2

4. *Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes what should be the limit?* On this question, opinions have been sharply divided. While some companies want no limits on domestic sourcing, others have asked for 90% domestic sourcing. The generally accepted view has been that since B2C

ecommerce based on FDI needs to promote Indian manufacturing a domestic sourcing of 30-40% on goods that are easily available domestically can be imposed. For detailed answers please see annexures 1 and 2

5. *How will retail sale under MBRT be restricted to states that have agreed to open front-end stores?* Location based restriction is against any tenet of ecommerce and should be done away with. However, there is a general agreement that FDI supported ecommerce companies should not be allowed to open frontend shops in any of the states where MBRT is not allowed.

6. *What should the entry routes and caps be in FDI in B2C ecommerce? Should it be automatic up to 50%?* There is a general agreement that 100% FDI be allowed and between 51 and 74% of which should be through the automatic routes. Please see annexures 1 and 2 for details.

7. *What are likely benefits to India economy particularly in terms?*

Please see annexures 1 and 2 for details.

8. *What should B2C ecommerce encompass -goods, services, intellectual property?* Most members agree that FDI should cover goods, services and intellectual property. However, in order to avoid any conflict with other services sector where FDI has already been allowed, the context of this paper should be limited to FDI in goods only. Please see detail feedback in annexures 1 and 2.

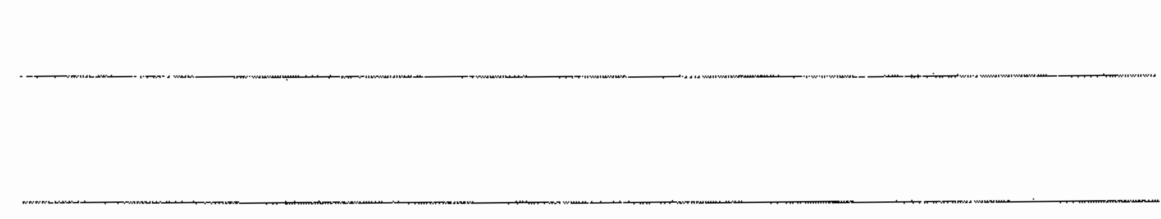
Should you require any further consultation or information, please feel to reach out to us.

Yours sincerely,

Kalyan Biswas

On behalf of Dr Subho Ray, President, IAMAI

Kalyan Biswas
Associate Vice President
Internet and Mobile Association of India
C-36, Basement, East of Kailash,
New Delhi - 110 065 (India)
Mob: 9971768811



1. Should FDI be allowed in B2C e-commerce?

1.1. The need for e-commerce in India -

1.1.1. **Support to physical retail:** The offline and online retail channels are increasingly merging to provide consumers with better service and options, across all the major economies. In India as well, we are beginning to see franchise models and offline vendors launching online stores. Through such tie-ups, the smaller physical stores benefit from better logistics, branding and product range, without the associated costs.

As the below chart shows, physical retail has continued to grow even in developed countries such as the UK and the US, where internet adoption and online buying is a lot more prevalent. The growth of the offline market is particularly strong in a developing nation such as China.

Country	Digital Buyer penetration	Online as %age of total sales	Physical retail growth
UK (2013)	87.2%	10.2%	1.4%
US (2013)	73.0%	8.1%	3.5%
China (2013)	49.3%	6.0%	14.7%
India (2012)	23.5%	2.3%	9.7%

Sources: eMarketer, US Census Bureau, National Bureau of Statistics of China, Technopak

1.1.2. **Does not inflate real estate prices and diverts funds to more productive functions:** Limited availability of real estate as a key challenge to the industry, according to most industry analysts. As the industry grows, real estate prices are likely to become more expensive, at the cost of other functions. In comparison, e-commerce vendors invest entirely in manpower, logistics, marketing and sourcing.

1.1.3. **Expands the retail market faster and more evenly by overcoming most of the challenges facing offline retail:** The other challenges facing the offline retail industry are shortages in manpower, poor logistics systems and high retail fraud (2.38% shrinkage vs a global average of 1.45%)[1]. With investments in logistics and staff training programmes, as well as better tracking systems to prevent theft and pilferage, e-commerce is uniquely suited to the Indian retail environment.

1.1.4. **Provides access to products not locally available:** One of the reasons that e-commerce has become popular is that e-commerce vendors can provide difficult to source and long tail products to consumers across the country. This includes high tech products such as sports shoes, medical supplies such as prescription glasses as well as handicrafts from region specific artisans.

1.2. Need for FDI in e-commerce

1.2.1. **Building world class e-commerce companies needs over $100 million in capital:** While smaller e-commerce players can become profitable early with slow growth, India needs to have large domestic players to compete with international majors. The Chinese e-commerce giant Alibaba, which is planning an IPO in 2014, raised $112 million in venture capital in the first 5 years of operation. Zulily, an American children's wear e-commerce site, raised $369 million in venture capital before its 2013 IPO, when it was valued at $2.6 billion.

[1] "The Indian Kaleidoscope", FICCI & PWC, September 2012

Restricting funding to domestic investors will prevent Indian entrepreneurs from building large companies and make them vulnerable to competition from international majors.

1.2.2. **Access to international expertise from financial investors:** International investors bring with them their experience of growing companies in different markets and help Indian entrepreneurs scale faster through their advice and networks. In addition to being more efficient, this also helps increase the quality of Indian entrepreneurship.

1.2.3. **Creates an Indian entrepreneur ecosystem by funding Indian entrepreneurs:** The Chinese start-up ecosystem as benefitted significantly through access to international risk capital. In addition to growing domestic behemoths and significantly boosting manufacturing and logistics, these entrepreneurs have also invested in other promising start-ups, leading to a virtuous cycle in Chinese entrepreneurship.

Alibaba Case Study: Alibaba was founded in 1999 by Jack Ma, with funding of $5 million from investors such as Goldman Sachs and Fidelity Asia. This was followed by two more rounds of funding, totalling $107 million in the next 5 years. Currently the Alibaba Group generates over $10 billion in revenues and employs 24,000 employees. The company is planning to list on a US exchange in 2014 and is expected to be valued over $120 billion.

In addition to building a company valued above $100 billion, the group has also invested in 3 other startups, including Sina Weibo, the Chinese equivalent of Twitter, and acquired 2 companies. Jack Ma has also invested in his personal capacity in a Chinese media company and has launched a private equity firm to invest further in China.

2. **Should it be open for all products or only for non-food products?**
E-commerce is most suited to and necessary in non-food products. Within food products, while groceries and household goods are also suited to e-commerce, perishables such as vegetables and fruit are better suited to physical retail formats.

3. **Should a limit for minimum capitalization be laid down?**
Minimum capitalisation limits are not required in the e-commerce sector as e-commerce companies will need to be well capitalised to be successful.
Also, minimum capitalisation requirement will adversely affect new entrepreneurs while benefiting established business houses. From our experience, Indian entrepreneurship is starved of funds in the initial stages and international financial investors should be encouraged to fill this gap.

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**
Source limits can be 30%, the same as for offline retailers.

5. **How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?**

   E-commerce companies discharge an important function of bringing a wide range of quality products to tier 2 & 3 towns, meeting the existing unmet demand at affordable prices, without any land requirements. Myntra, for instance, delivers products to over 1,500 cities and towns in India, including regions such as North-East India and Jammu and Kashmir, where physical retail has not successfully expanded, providing residents there with the same quality products and same prices as the rest of the nation. Hence e-commerce companies should not be treated as physical retail and consumer access to these services should not be restricted by states.

   It must be noted that the location of operations such as warehousing and administration should not be affected by the state policy on MBRT. Also, companies need to be protected from changes in policies due to changes in governments, such as recently seen in New Delhi.

6. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**

   Several Indian investors have shown interest in e-commerce and entrepreneurs, however, there are not enough domestic funds when compared to the requirements of the industry. Given the large capital requirements of e-commerce ventures and to ensure that Indian companies are not starved of funds, it is advisable that FDI from financial investors should be automatic up to 74%, with gradual expansion up to 100% in the next 3 years.

   FDI from strategic investors, such as Amazon, eBay, Walmart and Target should be limited to 49% in the near term, which can be increased to 74% and 100% over the next 3 - 5 years.

7. **What are likely benefits to Indian economy particularly in terms of**

7.1. FDI inflows (amount)

China saw $4.8 billion in e-commerce investments in the period 2010-1H2013, while Indian e-commerce saw under $1 billion of investment in the same period[2]. In this period, the Chinese e-commerce market grew from $57 billion to $182 billion[3]. The Indian e-commerce market is still nascent, as shown in the table below, and the e-commerce players will need capital to grow user adoption and credibility. It is reasonable to assume that the Indian e-commerce market can easily absorb over $10 billion in capital.

Digital Buyer penetration (%age of internet users)

	2011	2012	2013	2014	2015	2016	2017
China	39.5%	43.7%	49.3%	55.2%	61.7%	67.0%	71.0%
India	22.5%	22.9%	23.5%	24.4%	26.0%	27.0%	28.0%

Source: eMarketer

7.2. Additional employment (numbers) –

The top two e-commerce players in China, Alibaba and 360buy, employ close to 60,000 people. The majority of the employees are in the warehousing and logistics function. Smaller e-commerce companies that outsource these functions also

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[2] Asian eCommerce Report, CBInsights, June 2013

[3] eMarketer, June 2013

indirectly create employment at third party logistics providers. Development finance institutions such as the World Bank private equity division, the IFC, have also started funding e-commerce operators in regions such as Russia and Latin America, due to the high employment benefits created by these enterprises[4].

According to our calculations, every $1 million of investment in an e-commerce company results in the creation of 40 - 50 full time jobs within the company, in addition to the jobs created at vendors such as logistics providers, manufacturers and marketing service providers.

7.3. **Back-end infrastructure (amount) -**

Individual e-commerce companies in China and the US have spent billions each in building out their in house logistics, in addition to the business they provide to third party players. 360buy, one of the leading e-commerce companies in China spent $1.2 billion on logistics in 2011 alone. Alibaba is planning to invest $16.3 billion in logistics in the next 8 - 10 years. In the US, Amazon invested almost $14 billion between 2010 and 2013 to build out 50 warehouses. Given the nascent nature of logistics in India and the infrastructure and manpower training required, India investments in logistics are likely to exceed these numbers.

7.4. **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)**

Depending on the products and degree of disintermediation, e-commerce players can provide consumers with products for 10% - 50% less than offline players. While part of this is due to lower rental costs, it is also because e-commerce provides efficient manufacturers better scale by reaching a nationwide audience. This model also cuts out the middle, benefiting manufacturers and customers directly. E-commerce models such as flash sales sites also help manufacturers liquidate inventory quickly.

8. **What should B2C e-commerce encompass:**

8.1. **Goods** should be included, as this will boost manufacturing and help consumers access quality products that they don't have access to right now.

8.2. **Services** should be included as it will help create new markets and employment.

8.3. **Intellectual Property** should be included as selling digital media online significantly simplifies the supply chain and helps combat piracy by making purchasing digital media more convenient that illegal downloads.

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[4] Rocket Internet Fashion Ecommerce Startups, Lamoda & Dafiti, Get €25M From World Bank Group's IFC, Tech Crunch, Jan-2014

January 30, 2014

Mr. Ishtiyaque Ahmed
Director
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
Government of India
Udyog Bhawan
New Delhi-110011

Subject: Request for allowing FDI in retail trading through e-commerce

Dear Sir,

The Indian Private Equity and Venture Capital Association ("**IVCA**"), represents the interests of the private equity and venture capital investor community. We take this opportunity to congratulate the DIPP for putting out the discussion paper on the desirability of allowing FDI in e-commerce[1] in India. We submit this letter to formally present our views on this topic for your kind consideration, and to address the perceived disadvantages of permitting FDI in e-commerce highlighted in the discussion paper.

Introduction

1.1. We wish to submit that there is a strong case for treating multi-brand retail though e-commerce more liberally than physical multi-brand retail trading. Allowing FDI in retail trading through e-commerce will not adversely affect the interests the government is seeking to protect. On the contrary,

[1] Please note that the term 'e-commerce' is being used at several places in this letter to mean 'retail trading through e-commerce'.

Regd.Office: C-7, Paschimi Marg, Vasant Vihar, New Delhi-110057
TEL : +91 (11) 41730003, 46160389 E-mail: info@indiavca.org
Website: www.indiavca.org

allowing FDI in retail trading through e-commerce will be beneficial for several stakeholders, as explained below.

Case for a more liberal regime for e-commerce in retail

2.1 The policy on multi-brand retail trading set forth in the FDI Policy as amended by Press Note 5 of 2013 aims to promote the following interests:

(a) Protect *'kirana'* retailers in small cities and in states which are opposed to FDI in multi brand retail against competition from FDI backed multi brand retail stores;

(b) Encourage substantial investments in back-end infrastructure; and

(c) Encourage procurement from Indian micro/small/medium industries.

2.2 It appears that an important (and perhaps primary) aim of the policy is to protect the interests of small retailers of common food and daily needs products, i.e., *'kirana'* stores. This is achieved primarily through the stipulation in the policy that FDI backed multi brand retail businesses may open stores only in large and populous urban areas. It is estimated that India has approximately 50 cities with population of one million or more.

2.3 Various studies show that unorganized retail segment forms more than 90% of the Indian retail sector. Of this, kirana stores form a majority on a pan-India basis; in smaller local markets, the proportion of kirana stores in the local retail sector is higher. Against this backdrop, it is seen that restricting FDI backed multi-brand retail businesses from operating outlets in geographies where the local retail sector is dominated by kirana stores has the primary effect of protecting the kirana store segment.

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2.4 As can be seen from below, multi-brand retail trading through e-commerce does not militate against the interests which the multi-brand retail FDI framework aims to safeguard.

Retail trading through e-commerce does not hurt conventional Indian retail industry

3.1 Globally, electronics, branded apparels and fashion accessories, lifestyle products and books represent the major product segments being sold by e-commerce retailers. In the Indian context also, the above segments form the major product segments of e-commerce based retail. Additionally, residents of non-metro cities form a significant portion of customers of Indian e-commerce businesses, with appreciable participation from residents of small and remote cities and towns.

3.2 In Indian e-commerce, common food and daily need products, at best, form a negligible (if not non-existent) product segment. In fact, even in countries like the US where the 'farm to plate' infrastructure is vastly superior than in India, retail of food/daily need products through e-commerce is not perceived to be sustainable.

3.3 It can therefore be seen that products dealt through e-commerce in India are not similar to the products dealt through the kirana store/small retail ecosystem. It can also be seen that a large number of Indian e-commerce customers (i.e., customers from non-metro, small and remote cities) purchase products through e-commerce which may otherwise not be available through local retail stores.

3.4 Essentially, therefore retail trading through e-commerce does not take away sales and/or customers from local domestic retailers.

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Conditions on FDI in conventional retail trading are not required for FDI in e-commerce

4.1 Under the FDI Policy, FDI in multi brand retailing is subject to three critical conditions. As discussed below, these conditions should not be imposed on FDI in retail trading through e-commerce.

4.2 The first condition relates to minimum investment requirements. These requirements are not appropriate for the e-commerce sector. Universally, the e-commerce sector has traditionally been part of the startup ecosystem. The Indian e-commerce ecosystem is dotted with numerous startup companies founded by young individual (and often first time) entrepreneurs. Typically, while individual entrepreneur-led startup companies require external investment from an early stage, such investments are of small amounts. The startup company is able to attract larger investments once it validates its business model and grows its business. Imposing a minimum investment condition is likely to result in most, if not all, of the startup e-commerce companies shutting down due to inability to raise early stage risk capital, which would in turn lead to a situation where the only sustaining and viable e-commerce ventures are the few which are started/supported by large, established players. Not only would this potentially facilitate creation of monopolies, but also an environment which strongly discourages domestic entrepreneurship. An environment that can be considered as encouraging for the domestic e-commerce ecosystem should not place any minimum investment conditions. Such conditions act as hurdles in raising external investments required for early stages of growth.

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4.3 The second condition pertains to geographic restrictions stipulating that retail stores may be opened only in cities with specified population thresholds in states which have permitted FDI in multi brand retailing. This restriction is not required in e-commerce since retail trading via e-commerce does not impair the local market, as demonstrated above.

4.4 The third condition pertains to local sourcing, requiring that at least 30% of the value of procurement of manufactured/processed products purchased should be sourced from Indian micro, small and medium enterprises. As contended in the next section, a healthy e-commerce industry is expected to be hugely beneficial to India's micro, small and medium businesses. Having said that, imposing an external condition on e-commerce companies (which themselves start out as small startup companies) is best avoided.

Our perspective on the key disadvantages highlighted in the discussion paper

5.1 Permitting FDI in e-commerce is against the spirit of FDI policy in MBRT:

As set forth above, the practical effect of the MBRT FDI policy is to primarily safeguard the interests of common food and daily needs products retailers. Given that common food and daily needs products are near non-existent product verticals in e-commerce, allowing foreign investment in e-commerce would not impair the spirit of the MBRT FDI Policy.

5.2 Permitting FDI in e-commerce would seriously impair the small shops/kirana stores in India:

The Department's concern appears to be that e-commerce retail, which is part of the organized retail sector, if allowed to grow, would impair the country's vast unorganized retail sector. In India, unorganized retailing has continued to grow despite the advent of organized retailing. In fact, the

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Indian organized retail sector is faced with numerous challenges and is struggling to grow to profitability. This would indicate that in the Indian market, the small store and kirana store ecosystem will continue to be relevant notwithstanding the rise of organized retail. This conclusion is also supported by the experience of China, where the large ecosystem of traditional 'mom-and-pop' retail sector has hardly been dented by large domestic and international organized retailers. Going by the Chinese experience, the fears about growth of organized retailing leading to large scale unemployment also appear misplaced. We therefore submit that the fears that e-commerce retailing would impair the small store/kirana store ecosystem are misplaced.

5.3 E-commerce companies would be able to resort to predatory pricing:

It is true that customers' key attraction to e-commerce format is the pricing advantage which online retailers are able to offer in comparison to traditional retailers. A successful e-commerce business achieves higher efficiencies for the capital deployed, inter alia, by increasing inherent efficiencies (i.e., more efficient/better processes for performing essential tasks) and by achieving efficiencies of scale. The fact that expensive retail real estate is entirely avoided in e-commerce also helps in more efficient capital utilization by e-commerce businesses. These efficiencies translate into more competitive pricing for customers. From a macro economic perspective, lower prices would encourage consumption and increase economic activity, and also help check inflation. Therefore, we would submit that the price competitiveness offered by e-commerce retailers should not be seen as a disadvantage.

5.4 Creation of captive infrastructure:

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Website : www.indiavca.org

Creation of captive infrastructure would be a natural consequence of MBRT FDI policy which requires a minimum $50 million investment in backend infrastructure. This would not be true if FDI is allowed to participate in the e-commerce ecosystem that is evolving in India. In India (as is the case world over) e-commerce companies are been part of the 'startup' ecosystem. Typically, in the early-to-mid stages of a startup company the focus is to innovate to achieve cost efficiencies so that limited capital can be conserved (capital for these companies comes initially from entrepreneur's personal savings and later from third party equity investments of relatively small amounts). Typical e-commerce companies' inability to afford creating captive infrastructure would lead to an active demand for non-captive infrastructure, which in turn would encourage investments in specialized warehousing and logistics businesses. It can thus be seen that a thriving e-commerce sector would encourage investments in and creation of non-captive infrastructure.

5.5 FDI in e-commerce would be adverse to the domestic e-commerce industry:

The 'domestic e-commerce industry' primarily comprises of startup companies founded by first time entrepreneurs (the discussion paper also acknowledges this). These companies are typically dependent on capital/funds from third parties for growth and expansion. These companies typically do not have access to bank financing, inter alia, owing to the lack of proven track record, lack of assets with which to collateralize the debt, business models involving high cash burn that leads to unavailability of resources to service debt obligations, etc. The availability of domestic third party equity funding is marginal, at best. This is owing to the relatively low levels of risk tolerance which makes funding of startup

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Website: www.indiavca.org

companies unsuitable for domestic investors, in addition to the sparse availability of domestic capital. That leaves equity funding from foreign investors as the most viable source of capital for these companies. Once liberalized, a significant part of FDI activity in e-commerce would be by way of foreign investments into Indian entrepreneur promoted companies. As such, contrary to the fear articulated in the discussion paper, FDI in this sector would promote Indian entrepreneurship. We would reiterate that the growth of the Indian e-commerce sector, would result in new investments (and new enterprises being created) in the industries that support e-commerce such as warehousing and logistics.

5.6 Inventory based e-commerce would be adversely affect MSMEs:

India has a large number of micro, small and medium businesses including those manufacturing and/or dealing with indigenous arts, crafts and products. These businesses are typically located in non-tier 1 and 2 cities, and are traditionally dependent on the limited local market in which they operate. As the discussion paper correctly points out, e-commerce provides such businesses a channel to showcase and sell their products to a much wider market. There are several examples of small businesses in India located in smaller cities and towns becoming vendors to e-commerce companies and achieving predictable sales and sales growth, which would have been challenging had these businesses been limited to their local home markets.

The discussion paper states that the large pool of Indian vendors can tap into the benefits of e-commerce by partnering with e-commerce platform providers. Under the platform model, the vendors list their products on a third party's e-platform, and typically the platform provider would take and

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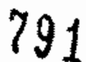
TEL : +91 (11) 41730003, 46160389 • E-mail: info@indiavca.org
Website : www.indiavca.org



pass on customers' orders to the vendor. The vendor packages and directly ships the product to the customer. In this model, the vendor needs to carry a sizable inventory to service the orders (and assume the resulting inventory risk), and should have the ability to ship and reliably deliver the product to the customer. This entails having access to capital and credit, and availability of warehousing and shipping/transportation facilities, all of which are challenging to accomplish for a small (and often remotely located) Indian vendor. Consequently, growth of these vendors is prevented, and they stay small scale perpetually. Inventory based e-commerce, directly addresses these challenges faced by small vendors by assuming the inventory risk, and responsibility for storage, shipping and payment collections. Thus, to enable domestic vendors to leverage the tremendous benefits of participation in e-commerce, it is imperative to promote an inventory based e-commerce ecosystem in India.

Conclusion

6.1 Based on the above, it is our considered view that permitting FDI in retail trading (single brand and multi-brand) through e-commerce is beneficial for India in multiple ways.

6.2 It is therefore humbly submitted that FDI in retail trading (single brand and multi-brand) through e-commerce should be permitted up to 100% under the automatic approval route without any conditions. However, if it is felt that permissibility of FDI in the e-commerce sector should be made subject to local sourcing requirements, then an appropriate local sourcing condition may be considered.

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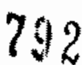

We hope that you would give favourable consideration to our request.

Yours sincerely,

(Signed and delivered Hard Copy)

Arvind Mathur

President

Indian Private Equity & Venture Capital Association

+91 9818934615

Regd.Office: C-7, Paschimi Marg, Vasant Vihar, New Delhi 110057
TEL : +91 (11) 41730003, 46160389 E-mail: info@indiavca.org
Website: www.indiavca.org

Subject: fdi in e-commerce
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KARIGAR

BINAY DAS
NARANA PONCHANANTALLA DOMJUR HOWRAH
PIN-711405
JAIN.VISHAL100@GMAIL.COM
09831702973

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be

placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country.	NONE

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— KARIGAR-2.jpg

KARIGAR

BINAY DAS

NARANA PONCHANANTALLA DOMJUR HOWRAH

PIN-711405

JAIN.VISHAL100@GMAIL.COM

09831702973

		b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all

Binay Das

— KARIGAR-3.jpg

KARIGAR

KARIGAR
BINAY DAS
NARANA PONCHANANTALLA DOMJUR HOWRAH
PIN-711405
JAIN.VISHAL100@GMAIL.COM
09831702973

			manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation.	None

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KARIGAR

BINAY DAS
NARANA PONCHANANTALLA DOMJUR HOWRAH
PIN-711405
JAIN.VISHAL100@GMAIL.COM
09831702973

		3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce compenies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts treditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing	

		product. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides	

Binay Das

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KARIGAR

BINAY DAS
NARANA PONCHANANTALLA DOMJUR HOWRAH
PIN-711405
JAIN.VISHAL100@GMAIL.COM
09831702973

		access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or

		products or goods are now available more in digital formats than the traditional physical format.	excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Binay Das

5

This email has been blocked from loading remote images.

Subject: FDI in E-Commerce should be allowed
To: ahmed.i@nic.in
Date: 01/30/14 04:43 PM
From: Jerry Johnson <jchnson.a.jerry@gmail.com>

Hello,

I'm writing as an individual citizen of India in support of encouraging FDI in e-commerce.

1. Should FDI be allowed in B2C e-commerce? Yes!

2. Should FDI be opened for all products or only for non-food products? It should be opened for ALL products.

3. Whether there should be a limit on minimum capitalization? No. Because if you keep a minimum limit, you will be creating barriers for new entrants and thus promoting the likelihood of price gouging by monopolies or duopolies. To keep prices low through increased competition and benefit the consumer, there should be no barriers to entering any commerce.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit? Again. No. There should be no such limit.
Enforcing businesses to source from domestic manufacturers would hinder the influx of best practices entering our industries and will allow for complacency and laziness on behalf of the domestic companies. They will have a guaranteed minimum business to ensure that they don't invest their profits in R&D, better quality and processes, better customer service, and better products. So, no limits on supply sources.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?
Yes, there should be an automatic, self-organizing route to investment which requires minimal bureaucratic approvals, stages, and processes. The investment cap should be set beyond 50% in order to encourage even more serious and long-term business investment by strong and stable companies.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?
There is tremendous value to gain and very little value to lose. The definition of FDI means that foreign capital investors are bringing their own money and taking their own risks. Our government should minimize these risks so that their assets are protected and the size of the investment increases. However, in any event of risks, it is the private capital investors that stand to lose their money -- not the people of India.

What we have to gain is intellectual assets, technical know-how, superior supply chain methodologies, superior quality standards, superior products, expansion of entrepreneurial employment, increased employment base, rising wages due to increased labor-side competition, more accountability and transparency in dealings, and much more

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

All commerce -- includes any and all kinds of trade or exchange between consenting parties, such as tangible products, goods, services, and intangible properties -- should be covered under E-commerce FDI policies.

Thank you
Jerry Johnson

Respected Sir,

I have gone through a discussion paper in regard to allowing FDI in E-Commerce and following are the responses for the question list mentioned in the Discussion Paper

1. **Should FDI be allowed in B2C e-commerce?**
   It must not be allowed in inventory based model. It is already allowed in the marketplace model where E-Bay and Amazon are operating since last 9 and 1 years respectively. Also USD 2.5 billion has come into Indian e-commerce companies over the last 3 years.

2. **Should it be open for all products or only for non-food products?**
   Question does not arise. We must not allow at all.

3. **Should a limit for minimum capitalization be laid down?**
   Question does not arise. We must not allow at all.

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**
   Question does not arise. We must not allow at all.

5. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**
   Question does not arise. We must not allow at all.

6. **What are likely benefits to Indian economy particularly in terms of-**
   - **FDI inflows (amount)** From the recent past investments in this sector, we cannot expect beyond USD 120 million to USD 130 million over 2to 3 years from only one inventory e-comm player
   - **Additional employment (numbers)** -- Entrepreneurs like me who have just started will have to close businesses. Further, I strongly believe un-employment generated is much more than employment created.
   - **Back-end infrastructure (amount)** -- USD 120 million to USD 130 million will be cumulative over 2 to 3 years (including infrastructure)

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

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[Vol.V of Vol-V]

Sr. No.	Particulars	Pages
26.	**Annexure-P17**: A copy of the responses provided by the Petitioners and various other persons to the Government of India to the above discussion paper.	803-937
27.	**Annexure-P18(Colly.)**: Copies of the representations dated 25.6.2014, and 17.11.2014.	938-941
28.	**Annexure-P19**: A copy of question and answer in Lok Sabha dated 18.7.2014.	942
29.	**Annexure-P20**: A copy of the email dated 28.4.2015 received by the Petitioners from the Respondent No.1.	943-944
30.	**Annexure-P21**: A copy of the representation made by the Petitioner on 12.5.2015.	945-946
31.	**Annexure-P22:** A copy of the Report published by Economic Times.	947-951
32.	**C.M.A.NO. of 2015:** An application under Section 151 of CPC for ad-interim ex-parte stay with affidavit.	952-961
33.	**C.M.A.NO. of 2015:** An application under Section 151 of CPC for exemption from filing original/ certified as well as typed/dim copy of annexures with affidavit.	962-965
34.	Vakalatnama/ board resolution.	966-968

FILED BY

RISHI AGRAWALA
ADVOCATE FOR THE PETITIONERS
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

Dated: 18.5.2015
New Delhi

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KAMAKSHI DESIGN STUDIO
10, Gr. Floor, Bhoomi Plaza, Masjid Galli, Dadar(W), Mumbai -400028.
Tel: 022-24368910/24325599, Email- kamakshideisigstudio@gmail.com

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	**YES** as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	**NONE**
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
Iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

			products to consumers, irrespective of physical boundaries.
Vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
Vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and	None

		passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
Viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Subject: FDI in E-Commerce
To: ahmed.i@nic.in
Date: 01/30/14 06:32 PM
From: Kapilan Balasubramanian <bkapilan@gmail.com>

Hi,

My views on allowing FDI in E-Commerce.

1. Should FDI be allowed in B2C e-commerce? Yes. FDI should be allowed in B2C e-commerce.
2. Should FDI be opened for all products or only for non-food products? All products
3. Whether there should be a limit on minimum capitalization? Yes. $100 Million.
4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit? Yes. 60%.
5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%? Yes. Automatic route up to 50%
6. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property? All three

Thanks,
Kapil

Subject: FDI in E-Commerce
To: ahmed.i@nic.in <ahmed.i@nic.in>

Date: 01/30/14 05:21 PM
From: Karthik Sridhar <karthik.sridhar@outlook.com>

Dear Sir,

This is with respect to Department of Policy & Promotion discussion paper on whether India should allow Foreign Direct Investment in E-commerce. Based on the articles listed on the discussion paper and the questions raised, here are my viewpoints

1. Should FDI be allowed in B2C e-commerce?
- Yes. FDI in ecommerce will allow further resources to an emerging and popular mode of commerce. The increasing growth of Internet penetration in India has impacted ecommerce and in the future I expect it to organically improve the infrastructural and logistics gaps that exists. Thereby allowing equitable spread of access to marketplace for everyone.

2. Should FDI be opened for all products or only for non-food products?
- Opening up FDI for all products including food products will ensure greater compliance to storage and maintenance of food articles, this inturn will improve quality or good sold and further reduce lacunae in food storage and management. On the flip side however, it may increase the prices of food products. As this will be marketplace driven commodity, this too shall be addressed through competition.

3. Whether there should be a limit on minimum capitalization?
- There should not be limits on capitalization. The current margins of operations are very thin for e-commerce companies and they will need a "breathing space" for raising capital at appropriate times.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?
- Sourcing from domestic manufacturers should be promoted. In the face of limitations however, domestic manufacturers may flout the opportunity by providing sub-standard quality of products, which in-turn may defeat the purpose of local sourcing. Instead of putting limits, DIPP should enable a policy of quality and price management which gives domestic manufacturers a "first right" to bid based on conformance of set standards

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?
- Would be preferable. FDI may also be allowed under FIPB rules to start wholly owned subsidiaries.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?
- Why should there be restriction in sale? States that agree for MBRT frontend stores should allow ecommerce options. This mix would best suit the consumers in the long run

As a citizen of the country with interest in its development and growth, I feel that opening up of sectors that are on a good trajectory of expansion will the most correct way forward.

Best Regards,

Karthik U Namboodiry

Kazari Apparels Private Limited

A-2/47(Basement),Rajouri Garden
New Delhi-110027
Ph-011-45701735

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25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

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Sl No.	Question	Pros	Cons
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Kazari Apparels Private Limited

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		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
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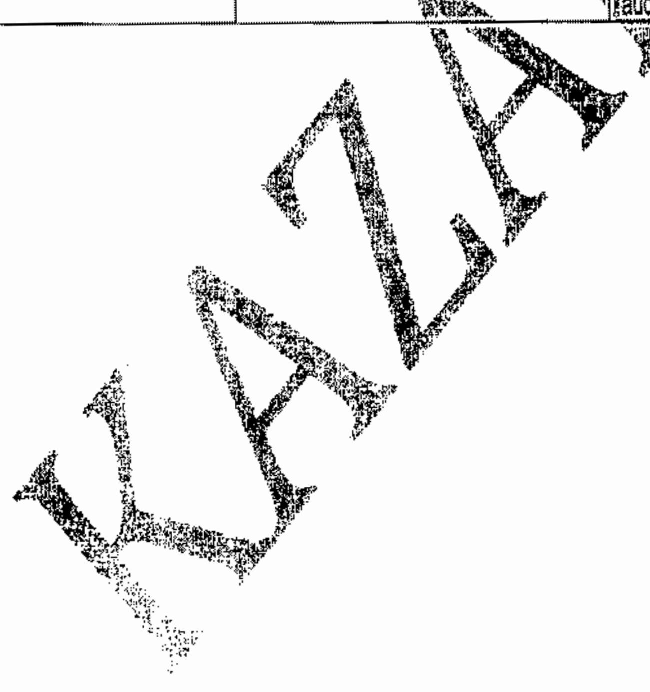
		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

KAZARI

Kazari Apparels Private Limited

A-2/47(Basement),Rajouri Garden
New Delhi-110027
Ph-011-45701735

	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property.With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.



Subject: Response on FDI in e-commerce
To: ahmed.i@nic.in
Date: 01/30/14 05:01 PM
From: Kiran Jonnalagadda <kiran@hasgeek.com>
Sender: Kiran Jonnalagadda <kiran@hasgeek.in>

Dear Sir,

Pursuant to this notice on MediaNama about submitting a response on FDI in e-commerce, here are my views:

1. Should FDI be allowed in B2C e-commerce?

Yes

2. Should FDI be opened for all products or only for non-food products?

All products, including food.

3. Whether there should be a limit on minimum capitalization?

No, any amount should be allowed.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

No, there should be no such limits.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Yes, automatic route up to 50%

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

States should not be allowed to override the national FDI policy.

7. What are the likely benefits to Indian economy, particularly in terms of FDI Inflows, additional employment, back-end infrastructure and efficiency?

We will benefit hugely from cash inflows keeping the currency stable, efficiency in retail operations and the resulting education for otherwise underemployed youth, and end-to-end infrastructure that will be usable by local players as well.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

All three.

Best,
Kiran

--
Kiran Jonnalagadda
+91-99452-35123
http://hasgeek.com

Subject: [No subject]
To: ahmed.i@nic.in

Date: 01/30/14 05:01 PM
From: Kushan Mitra <kushan.mitra@gmail.com>

1. Should FDI be allowed in B2C e-commerce?
Yes

2. Should FDI be opened for all products or only for non-food products?
Yes

3. Whether there should be a limit on minimum capitalization?
Yes, the investee company should have a paid-up capital of Rs 50 lakhs and a minimum investment threshold of US$50,000

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?
Ideally, no. But a minimum sourcing requirement from domestic manufacturers of 25% can be the norm. However, with a bulk of sales being of mobile phones made in China, this may be difficult to implement. And how will it be monitored?

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?
yes, 50% automatic FDI is a good idea, with a cap of 74% initially and like telecom that could rise to 100% in a few years.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?
I think online retailers and physical retailers are in fundamentally different areas and will not compete. There is no point in restricting sales, as this will only create a black market. How will sales take place in Gurgaon when they can't in Delhi?

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?
FDI inflows may increase, not dramatically, but they will increase. This will also create a new class of Indian entrepreneur and engineer. As for warehousing and delivery mechanisms, online retailing has already proven to have changed the game in India and this will provide employment for hundreds if not thousands of people.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?
Goods and Services are obvious, but IP - such as movies and music is already being sold in India through

closed loop stores.

Regards

Kushan Mitra

Managing Editor,
Digital and New Projects,
The Pioneer

--
- Kushan Mitra http://www.twitter.com/kushanmitra

Subject: Feedback on FDI in E-commerce
To: ahmed.i@nic.in

Date: 02/03/14 06:04 PM
From: LAPCOM PERIPHERALS PVT. LTD. <lapcom.in@gmail.com>

Dear Sir,

I have read the discussion paper on allowing FDI in E-Commerce and following is my feedback on the same:

1. Should FDI be allowed in B2C e-commerce ?

No it should not be allowed in inventory based models due to various cons mentioned in the discussion paper. Already existing business of E-Bay (since 2004) and Amazon (since June 2013). Both have written permission from the Govt of India to operate the marketplace model in India. Also in marketplace model US $ 2.5 billion has come into Indian e-commerce companies over the last 3 years.

2. Should it be open for all products or only for non-food products?

It should not be allowed at all

3. Should a limit for minimum capitalization be laid down?

It should not be allowed at all

4. Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

It should not be allowed at all

5. What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

It should not be allowed at all

6. What are likely benefits to Indian economy particularly in terms of-

- **FDI inflows (amount)** In no way can we expect beyond US $ 100 to US$ 150 million over 3 years from only one inventory e-comm player

- **Additional employment (numbers)** -- there will be high net unemployment basis the cons stated in the discussion paper. **It will create small employment of 3,000 over 2/ 3 years but unemployment to 40 to 50 million**

- **Back-end infrastructure (amount)** -- the above mentioned US $ 100 million to US$ 150 million will be cumulative over 3 years including infrastructure

- **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)**Let's notlive in a fool's paradise. On the contrary the social problems due to the unemployment will be humongous. . It will also cause huge income disparities. India does not have a social security system as in the US. Can India afford the problems??

With Best Regards

Team LAPCOM

LAPCOM Peripherals Pvt. Ltd.
105A-106, Bajaj House, 97 Nehru Place
105-106 Pragati House, 47-48 Nehru Place
New Delhi -110019 (India)
Tel:+91-11-41395528, 41395529 Fax:46508986
website; http://www.lapcom.in

TIN : 33804562871

ஸ்ரீ ராமஜெயம்

Ph : 04173-243686
Cell : 93455 18686

M.D. கோபால்

M.D. GOPAL

SILK CLOTH MERCHANT

178A, VELLALAR STREET, ONNUPURAM, PIN : 632 315. ARNI TK, T.V.MALAI DIST.

819

Date : 25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

The Indian E-commerce Industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce Industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country.	NONE

TIN : 33804562871

ஸ்ரீ ராமஜெயம்

Ph : 04173-243686
Cell : 93455 18686

M.D. கோபால்

M.D. GOPAL

SILK CLOTH MERCHANT

178A, VELLALAR STREET, ONNUPURAM, PIN : 632 315. ARNI TK, T.V.MALAI DIST.

820

		b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	Date : ....
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.

TIN : 33804562871

ஸ்ரீ ராமஜெயம்

Ph : 04173-243686
Cell : 93455 18686

M.D. கோபால்

M.D. GOPAL

SILK CLOTH MERCHANT

178A, VELLALAR STREET, ONNUPURAM, PIN : 632 315. ARNI TK, T.V.MALAI DIST.

V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from	None

TIN : 33804562671

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ஸ்ரீ ராமஜெயம்

Ph : 04173-243686
Cell : 93455 16686

M.D. கோபால்

M.D. GOPAL

SILK CLOTH MERCHANT

176A, VELLALAR STREET, ONNUPURAM, PIN : 632 315. ARNI TK, T.V.MALAI DIST.

822

		inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that	Date : ....

TIN : 33804562871

ஸ்ரீ ராமஜெயம்

Ph : 04173-243666
Cell : 93455 18686

M.D. கோபால்

M.D. GOPAL

823

SILK CLOTH MERCHANT

176A, VELLALAR STREET, ONNUPURAM, PIN : 632 315. ARNI TK, T.V.MALAI DIST.

Date : ....

		as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

For M.D. GOPAL

M.D. Gopal

PROPRIETOR

M. R.® CREATION PVT. LTD.

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824

Sales Office : P-16, Kalakar Street, 'Om Tower', 2nd Floor, Kolkata - 700 007
Phone : 033 2274 8829, Fax : 2274 2194, Email : deshnarachit@gmail.com
Mobile : 98310 81982 (Ajay Jain), 98313 81982 (Ramesh Jain)

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	NONE

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Sales Office : P-16, Kalakar Street, 'Om Tower', 2nd Floor, Kolkata - 700 007
Phone : 033 2274 8829, Fax : 2274 2194, Email : deshnarachit@gmail.com
Mobile : 98310 81982 (Ajay Jain), 98313 81982 (Ramesh Jain)

		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

Our Sister Concern :
DESHNA CREATION
'M. R. House', E-Lower Ground, Kohinoor Textile Market
Ring Road, Surat - 395 002, Ph.: +91 261 325 8829

अच्छी क्वालिटी सस्ते दाम
यही है हमारी पहचान

Sales Office : P-16, Kalakar Street, 'Om Tower', 2nd Floor, Kolkata - 700 007
Phone : 033 2274 8829, Fax : 2274 2194, Email : deshnarachit@gmail.com
Mobile : 98310 81982 (Ajay Jain), 98313 81982 (Ramesh Jain)

			products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

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	encompass- ·Goods ·Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property.With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Mahendra Gadia

1. **Should FDI be allowed in B2C e-commerce ?**
   It must not be allowed in inventory based model. It is already allowed in the marketplace model where E-Bay and Amazon are operating since last 9 and 1 years respectively. Also US$ 2.5 billion has come into Indian e-commerce companies over the last 3 years.

2. **Should it be open for all products or only for non-food products?**
   Question does not arise. We must not allow at all.

3. **Should a limit for minimum capitalization be laid down?**
   Question does not arise. We must not allow at all.

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**
   Question does not arise. We must not allow at all.

5. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**
   Question does not arise. We must not allow at all.

6. **What are likely benefits to Indian economy particularly in terms of-**
   - **FDI inflows (amount)** Let's not fool ourselves. We cannot expect beyond US $ 120 million to US$ 130 million over 2 to 3 years from only one inventory e-comm player
   - **Additional employment (numbers)** -- Unemployment created is much more than employment created. There will be 3,000 new jobs but loss of 40 to 50 million jobs over the next 2 to 3 years.
   - **Back-end infrastructure (amount)** -- US $ 120 million to US$ 130 million will be cumulative over 2 to 3 years (including infrastructure)

[illegible] discussion paper by DIPP – Indian E-commerce Industry

[illegible] E-commerce Industry welcomes the attempt by the government to [illegible] the discussion [illegible] investment. This is an extremely welcome move and a step in the right [illegible] foreign investments in E-commerce to include inventory apart from marketplace [illegible] industry at par with other emerging markets where both marketplace and inventory [illegible]

[illegible] opening the sector to the economy will be far reaching. The liberalization of the [illegible] (competitive pricing and easy access to rural consumers), smaller manufacturers and [illegible] and will enable the local E-commerce companies to access global expertise, finance and technology.

[illegible] Indian E-commerce Industry led by first generation entrepreneurs has fueled the development of SMEs and [illegible] growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics [illegible] infrastructure development. The sector has created employment opportunities for the middle and lower [illegible] income levels and contributed to the development of a more robust ICT sector. E-commerce is a great [illegible] enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large [illegible] through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe [illegible] countries. An example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player [illegible] Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries [illegible] categories which are manufactured by SMEs such as apparel, shoes, home furnishings [illegible] can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies [illegible] their growth. We hope that the government will consider our recommendations in liberalizing B2C [illegible] in the country.

No.	Question	Pros	Cons
[illegible]	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country b) Encourage development of infrastructure [illegible]	NONE

		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts e) Create transparency in financial transactions	
II	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only	The market in India has a long way to maturity for marketing of perishable items through E-commerce
III	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
IV	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
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			products to consumers irrespective of physical boundaries
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce	None
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

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			of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013) The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).		
VIII	[illegible]	What should B2C E-commerce			

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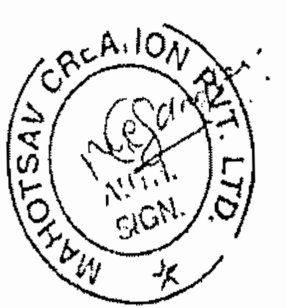
- 4

	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three, Goods, Services and Intellectual Property With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences



Views on FDI in B2C E-Commerce in India

Sl.No	Question	Pros	Cons
i.	Should FDI be allowed in B2C e-commerce?	• Yes FDI should be allowed in B2C e-ecommerce but gradually in a phased manner. • In the first phase FDI in e-commerce should be allowed in sector such as travel and transport, healthcare which are likely to improve services and will have incremental effect on economy.	• The financial strength will provide capability for sustenance which might affect small retailers.
ii.	Should it be open for all products or only for non-food products?	• FDI in B2C e-commerce must confirm to the principles of rules prevalent for a given sector and any relaxation of rules for e-commerce must be in conjunction with relaxation for the sector in general. The restriction in investment for agricultural products must also be applicable for e-commerce.	
iii.	Should a limit for minimum capitalization be laid down?	• There is need for minimum capitalization to avoid fly by night operators.	• There is need for better scrutiny of applications to avoid fiasco like speakasia.com. There is need for involvement of other government agencies like Enforcement Directorate, FBI before finalization of policy and it should not be done in hurry.
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	• Yes, a limit should be prescribed • The limit should be industry specific and not a generic for all industry • For example in the fashion and apparel category the limit should be 100% in the beginning and should gradually be reduce to desired level • India is behind China in manufacturing sector. In the apparel industry China has advantage of scale and there is probability of garments flooding Indian market through FDI funded	• The only drawback is that the industry players and foreign investors will protest saying that the policy are not favourable.

		e-commerce site thereby denying the advantage to Indian manufacturer's. • In the case of electronic industry the limit should be low in the initial stages and gradually rise to the desired level. India does not have well developed domestic electronic manufacturing industry and the 65% of the electronic product are imported.	
v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	• The restriction of retail sale under MBRT to states that have agreed to open up front end stores will go against the principle of e – commerce business.	• The restricted sale will increase the cost of business thereby not providing the low price advantage to the end customers. • From administrative perspective it will be difficult to implement and monitor. • There is probability of middle men appearing near the border of the states where retail sales are allowed and this in turn may promote illegal trade and increase corruption.
vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?	• The investments should not be routed through offshore tax havens and multiplicity of entities to avoid financial irregularities and black money. • In the initial stages it should not be automatic up to 50%.	
vii.	What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)	• FDI in e-commerce will bring in capital in the economy which will have multiplier effect on economy leading to enhanced economic activities and job creation. • The infrastructure development will happen with policy interventions and government stepping up the funding and implementation of infrastructure projects. FDI will only minimal effect in overall infrastructure except for building of warehouse and marginal effect on logistics services	• FDI might lead to price undercutting by new players so there is need for effective monitoring mechanism through Competition Commission of India for level playing field. • The e-commerce industry in India has grown so far without effective monitoring and lack grievance redressal for customers. There is need for an ombudsman for grievance resolution of customer complaints.

		improvement. • Though there are cost benefits to customers due to economies of scale and efficiency improvement however the quality aspects should not get overlooked and definite guidelines should be formulated with regard to product related claims by the e tailers in different product categories.	

The highest growth has been registered for the following industry segment though not necessarily in the same order.

- Apparel & Accessories
- Electronics
- Health Products
- Home Decor

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Dear Sir,

MediaNama (www.medianama.com) is the premier publication for news and analysis of the digital ecosystem in India. Our mission is to support the creation of **an open, fair and competitive digital (Internet and Mobile) ecosystem in India**. We welcome the DIPP's interest in starting the consultation process on enabling Foreign Direct Investment in E-commerce in India, since this industry is an integral part of the nascent digital ecosystem in the country. It has impacted the livelihood of thousands of people, and has the potential the impact the lives of millions in our country.

We also believe that there should be a **public consultation process**, and we would be glad to share and defend our viewpoint **in an open house discussion**, if one were to be held.

Our answers to the questions raised by the DIPP below:

Q1. Should FDI be allowed in B2C e-commerce?

Ans: We believe that FDI in B2C e-commerce (henceforth referred to as 'e-commerce') should be allowed.

Increased competition will lead to better provisioning of goods and services for consumers and for businesses across the e-commerce value chain to become more efficient. Not allowing FDI in e-commerce will lead to a reduction in competition, and the continuation of a business that is, in comparison, far less efficient. This leads to costs being transferred to the consumer, and is not in consumer interest. Lower competition often results in lower salaries and employment as well.
It is important to also note that there is a paucity of funds from within India to support the growth of E-commerce. These businesses require vast amounts of investment to bring in economies of scale. So far, the funds have come from foreign venture capitalists, who have seen this opportunity play out in other international markets, and realize its potential. Before 2008-09, investment in e-commerce in India was vastly ignored, because of a lack of faith in the Indian economy to support building these businesses. The scale at which e-commerce in India operates now justifies the vision of foreign venture capital funds, and the risks they took in supporting Indian entrepreneurs to build this ecosystem.

E-commerce is a superior form of retail, and not allowing FDI in e-commerce will hinder progress and growth in the retail sector. An open and competitive retail market with regulatory oversight preventing malpractices will benefit the Indian economy, Indian businesses, and above all, Indian consumers. We

believe that the government should encourage entrepreneurship and competition, with regulatory oversight.

2. Should FDI be opened for all products or only for non-food products?

Ans: We believe that FDI should be opened for all products. Competition, with regulatory oversight to ensure fairness, will result in the establishment of best practices in procurement, in terms of forecasting and planning, and supply chain management. This will benefit producers, suppliers and logistics businesses. Competition will also force businesses to focus on convenience and affordability for end consumers, break cartels and address challenges posed by neighborhood retail monopolies.

3. Whether there should be a limit on minimum capitalization?

Ans: We believe there should be no restriction on minimum capitalization. Setting a minimum capitalization will mean that business becomes the mandate of a moneyed few, and will prevent the creation of small, niche businesses that cater to the interests of small consumer segments. The Internet allows consumers of types to be provided with goods that meet their unique needs, without the restriction of shelf space or location. There might be a market for sports equipment only for left-handed individuals, or for the unusual market of multi-colored socks. However, these segments might not be of interest to large retailers, because they're too small a segment for them to focus on. Minimum capitalization requirements will prevent the creation of such niche businesses.

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

Ans: We believe that a distinction needs to be made for sourcing of digital and physical goods. As such, digital goods are intellectual property and sale of intellectual property should not be restricted by geographical boundaries: these often help in the creation of more intellectual property, without consumption of limited national resources. For example, a research report created in the United States of America about businesses practices there might assist in setting up of a similar business in India. Lack of restriction on the digital products like mobile applications and software across geographical boundaries across the globe allows Indian application developers to create products and sell across the globe. India is currently seeing the beginning of a boom in creation of applications for global markets, and any restriction on sourcing might lead to reciprocal protectionism from other countries. In many cases, it may not be possible to ascertain which country, city or state a consumer might be purchasing digital goods from, because the delivery of digital goods is via the Internet.

In case of physical goods, however, we believe that support needs to be given to domestic manufacturing, without particularly impacting the starting up of e-commerce businesses. We would recommend that up to an annual gross merchandise value (GMV) sale of a limit specified by the DIPP (say, Rs 500 crores per year), e-commerce businesses should be allowed to procure goods for sale internationally without any domestic sourcing requirements. However, in case of the GMV

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exceeding this specified amount, 15-20% procurement of either goods produced in India, or where value addition is done in India, should be mandated to promote domestic manufacturing and value addition. This will prevent dumping of goods in India, and encourage domestic manufacturing.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Ans: For startups, the process of going through the Foreign Investment Promotion Board (FIPB) for approvals can be a time-consuming and inordinately expensive task. This will limit the propensity of entrepreneurs to start e-commerce businesses in India. In principle, we believe that there should be no requirement for e-commerce companies to go through the FIPB, and FDI should be allowed up to 100% under the automatic route.

However, if the DIPP does mandate FIPB oversight in case of e-commerce investments, we would appreciate it if the process was as per an automatic route up to 75%, and that the FIPB decision making process was made public, transparent and efficient.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

Ans: We believe that E-commerce should be treated separately from physical retail. As long as E-commerce companies are only delivering goods and services, no restrictions should apply on distribution. The premise of doing an e-commerce business is that you are trying to aggregate consumers across the country, and target a set consumers across a single national market.

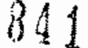
Restrictions on sale under MTRB must only be applicable in case an e-commerce company is setting up a physical retail outlet, in accordance with existing laws.

Please also be aware that any restriction on the sale of digital goods under multi-brand retail will create inordinate complications in the sale and consumption of intellectual property on the web and mobile applications. In many cases, it may not be possible to ascertain which country, state or city a consumer might be purchasing digital goods from, because the delivery of digital goods is via the Internet.

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

Ans: The investments made by Venture Capitalists in online commerce, whether marketplaces or otherwise, have contributed significantly to the growth of the Internet in India. Our reasons for supporting FDI in e-commerce are as follows:

- **Consumer Interest:** Customers are now more comfortable with paying online than ever before. e-commerce companies, with the help of logistics providers like Blue Dart, Gati, Delhivery and others



have led to the availability of products in small towns that had otherwise might not have had access to them.

E-commerce also provides unlimited shelf space, which is a limitation of offline retail. This allows consumers access to a wider variety of products than ever before.

E-commerce also offers consumers a convenience of being able to shop whenever they want, from whereever in the world they are. The advent of mobile commerce will make it even easier for consumers to purchase products they want.

Competition in e-commerce has driven down prices of products, making them accessible to a wider strata of society.

- **Business Interest:** Investments made in e-commerce in India have been spent on building an entire ecosystem of businesses: money has been spent on advertising and marketing, on payment gateways and improving the consumer experience while making payments, on delivery and logistics businesses. Logistics businesses like Chhotu, Gharpay and Delhivery were created purely for supporting the growing demands of e-commerce. Book Publishers and producers of goods have found a much wider market online than offline and are able to cater to a larger base of customers than they would have been offline.

It's important to note that businesses have already invested. expecting continued growth in the sector, and not allowing FDI in e-commerce will force them to scale down operations.

- **People Interest:** Businesses have invested in growth. E-commerce businesses today employ people in the thousands and have the potential to employ many more. We are at the beginning of the e-commerce revolution in India. Not allowing FDI in e-commerce will force these businesses to lay people off. The announcement that FDI in e-commerce would not be allowed last year forced many fledgling e-commerce businesses to shut shop and lay off people.

- **Impact on Entrepreneurial ecosystem:** with FDI in e-commerce not allowed, the message that goes out to entrepreneurs is that the government of India is blocking routes for them to raise money and build their businesses. We've seen several product businesses leave the country and set up operations abroad in the recent past. One of the reasons for this is that the economic environment is not conducive to starting businesses in the online and mobile domain, and policy changes can derail operations. Therefore, some businesses have relocated to the United States of America, since they believe that the government policy and the investment ecosystem in Silicon Valley is more conducive for

entrepreneurship. This leads to a different kind of brain drain, and will impact the Indiar economy in the long run

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

In case the DIPP decides to treat all three categories (Goods, Services and/or intellectual property) as the same, we would recommend allowing 100% FDI in e-commerce without restrictions.

In case the DIPP intends to provide any restrictions whatsoever, such an approvals process under FIPB and/or provisions mandating domestic sourcing, we would suggest that they treat physical and digital goods separately: We believe it's difficult, counter-productive and unadvisable to separate services from intellectual property, and doing so would have an adverse impact on the growing industry typically labeled as Software As A Service' (SAAS), and create undue complications in business.

Summary of our submission

1. FDI should be allowed in e-commerce.

2. Support needs to be provided for building an e-commerce market that will benefit consumers, create employment, encourage competition, and allow value creation and entrepreneurship to be support.

3. FDI should be allowed in all products, including food products.

4. There should be no limit on minimum capitalization.

5. For domestic sourcing requirements: a distinction should be made between digital and physical goods. No domestic sourcing requirements for digital goods. In case of physical goods, domestic sourcing of only 15-20% should be mandated, and that too, only beyond an annual Gross Merchand se Value sale of Rs 500 crore. This is allow starting up without restrictions, and help support domestic manufacturing once a business reaches scale.

6. No FIPB requirements for e-commerce. However, if FIPB oversight is mandated, then it should be via the automatic route until 75%, else it will add additional costs to a startup raising money. Even then, the FIPB process should be transparent and public.

7. e-commerce should be treated separately from physical retail when it comes to retail sale under MBRT, in order to allow e-commerce businesses to target a single national market. Restrictions should only apply in case an e-commerce company sets up a physical retail business.

8 No restriction on sale of digital goods under MBRT, since it may not be possible to ascertain country, state or city of consumer purchasing digital goods.

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9. Benefit of FDI in e-commerce: providing better goods and services to the consumer because of lack of geographical limitations and unlimited shelf space, and encouragement of competition. Businesses benefit because of wider reach and consumer base, and an entire ecosystem of e-commerce affiliated businesses gets created. This leads to more employment opportunities and competition for talent, leading to better pay. Policies that support Entrepreneurs will prevent a brain drain.

10. DIPP should not treat Goods, Services and/or intellectual property as the same in case they intend to put restrictions, because this will impact SAAS businesses. They should then treat goods as physical and digital, and have no restrictions on/conditions for the sale of digital goods. Ideally, there should be no restrictions.

Subject Subject:-Discussion paper on e-commerce in India - seeking comments/views
To: ahmed.i@nic.in

Date: 01/30/14 01:12 PM
From: Punit Sindhwani <punit@mirchimart.com>

Dear Sir,

Thanks for providing the opportunity to share our feedback / comments on FDI in Ecommerce in India.

Enclosed please find the same.

Thanks,

Punit Sindhwani

Director

Mirchimart India (p) Ltd.

		Pros	Cons
	Should FDI be allowed in B2C ecommerce?	Increase in FDI will increase number of players in ecommerce, give consumers more options, better price and service. It will also help small players compete with bigger players in ecommerce space and offer innovative solutions	FDI in India may encourage bigger ecommerce players to sell at loss, which could affect small retailers
	Should it be open for all products or only for non-food products?	We feel it should be for all as it all categories can benefit from it.	
	Should a limit for minimum capitalization be laid down?	No, FDI should help create a level playing field for smaller ecommerce companies also	
	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	This can be for larger players exceeding certain revenues or certain amount of FDI. 20-25% could be a good limit.	Larger FDI amounts should have regulation so they don't indulge in selling at loss.
	How will retail sale under MBRT be	It is easy to control that using	

	restricted to States that have agreed to	technology such that buyers can only procure from warehouses in that state	
	open frontend stores?		
	What should the entry routes and caps be	yes	
	in FDI in B2C e-commerce companies? Should it be automatic up to 50%?		
	What are likely benefits to Indian economy		
	particularly in terms of-		
	(a) FDI inflows (amount)	Ecommerce all over world attracts lot of Investment money, money inflow can be significant.	
	(b) Additional employment (numbers)	Fundamental to ecommerce is highly efficiency supply chain management,	
	(c) Back-end infrastructure (amount)		
	(d) Efficiency (e.g. lower price to	Ecommerce has lowered prices all of the world (including India in current form) consumers all over country will enjoy great selection and great prices unlike current scenario where it is restricted to bigger towns only	
	customers, higher price to		
	producers/manufacturers, ease of		
	operations etc.)		
	What should B2C e-commerce		
	encompass-		
	-Goods	Yes	
	-Services	Yes	
	-Intellectual Property	yes	

Subject: On FDI in e-commerce
To: ahmed @nic in

Date: 01/30/14 04:37 PM
From: NT Balanarayan <balu@medianama.com>

846

1 Should FDI be allowed in B2C e-commerce?

Yes

2. Should FDI be opened for all products or only for non-food products?

For all products

3. Whether there should be a limit on minimum capitalization?

No. I don't see a reason why there should be any. If people want to pup $ into India why should we decline them?

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

You can ask companies to start sourcing 20% of raw materials from within India in five years in cases where it is possible. Asking companies to source that much from within India from the word go is not practical as a lot of things are not manufactured here yet. Government needs to encourage investment in development of raw materials and base materials before putting up such a clause.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Yes, at least 50% if not more.

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

7 What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment back-end infrastructure and efficiency?

Companies are waiting to invest in India so expect a lot of money to pour in. When a company receives such huge invetments they are bound to hire more to scale which will create more jobs. With competition and enough funding companies can invest in infrastructure over the short term to make their business better in the long run.

8 What should B2C e-commerce cover – Goods. Services and/or Intellectual Property?

All of them

Regards,
NT Balanarayan
+91 8588 085 270

Flat No. 10, Plot No. 70,
Vallabh Nivas, Sion (West),
Mumbai - 400 022.
Tel. : 022 - 6452 5257 / 98202 37057
Email ID : omclothingsuites@gmail.com
info@salwarstudio.com

847 25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl.No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	NONE

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Flat No. 10, Plot No. 70,
Vallabh Nivas, Sion (West),
Mumbai - 400 022.
Tel. : 022 - 6452 5257 / 98202 37057
Email ID : omclothingsuites@gmail.com
info@salwarstudio.com

		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

Flat No. 10, Plot No. 70,
Vallabh Nivas, Sion (West),
Mumbai - 400 022.
Tel. : 022 - 6452 5257 / 98202 37057
Email ID : omclothingsuites@gmail.com
info@salwarstudio.com

			products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows , (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

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Mumbai - 400 022.
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Email ID : omclothingsuites@gmail.com
info@salwarstudio.com

		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

Om Clothing

Flat No. 10, Plot No. 70,
Vallabh Nivas, Sion (West),
Mumbai - 400 022.
Tel. : 022 - 6452 5257 / 98202 37057
Email ID : omclothingsuites@gmail.com
info@salwarstudio.com

	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property.With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

For OM CLOTHING

Proprietor / Authorised Signature

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Subject: **Comments & Views on the Discussion Paper on e_Commerce in India - Submitted by Online Recharge Services Private Limited, Gurgaon**
Date: 01/29/14 04:04 PM
From: Sharat Jain <sharat.jain@rechargeitnow.com>
To: ahmed.i@nic.in
Cc: 'V K Hajela' <virendra.hajela@esteltelecom.com>

Dear Mr. Ishtiyaque Ahmed,

Director

Department of Industrial Policy

Min of Commerce & Industry

Udyog Bhawan

New Delhi

-

This has reference to the Discussion Paper on e-commerce issued by your office. Please find below our response to your q
your consideration:

Sl. No.	Question	Pros	C
i.	Should FDI be allowed in B2C e-commerce?	Yes, More Investment will lead to higher growth, Promote International Best Practices, Provide Funding for New Ventures, Improve the Entrepreneurial Ecosystem	None
ii.	Should it be open for all products or only for non-food products?	To open for all Products, improves reach of produce to consumers; promotes fair play; provides price transparency, avoids hoarding	None
iii.	Should a limit for minimum capitalization	None, the ecosystem needs	None

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	be laid down?	many small entreprenerurial ventures to be funded and supported.	
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	25% Limit may be specified for sourcing Products or Services from Domestic Market	None
v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	No comment	
vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?	Should be automatic up to 50% like in other sectors	None
vii.	What are likely benefits to Indian economy particularly in terms of-		
	(a) FDI inflows (amount)	USD 10 billion in 3 Years	
	(b) Additional employment (numbers)	Employment Generation in IT, Logistics, Transport	
	(c) Back-end infrastructure (amount)	Supply Chain efficiencies will lead to less wastage and development of regional hubs for distribution	
vii.	(d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)	Will cut down the margin of middle men. Large scale of operation will benefit both Producers and Consumers	None
viii.	What should B2C e-commerce encompass-	All kinds of Product, Services and also Intellectual Property	None

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	Goods		
	Services		
	Intellectual Property		

We will appreciate a confirmation of receipt of this message. Please keep us part of this consultative process and do invite
discussion session on the same.

Thanking you,

Sharat Jain

President & co-Founder

Online Recharge Service Private Limited

Plot No. 126 Sector 44

Gurgaon – 122002

Haryana

Mobile: 9810018618

PROGRESS HARMONY DEVELOPMENT

Estd. - 1905

DIRECTOR

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IND-IS-IC-3344
29th Jan 2014

Dear Shri Ishtiyaque Ahmed ji

We would be happy in providing views/comments and suggestions on how much FDI could be allowed and on sourcing and the entry route will help in development and policy making exercise of the Department of Industrial Policy & Promotion.

We sincerely believe that above concerns and recommendations will help the government and concerned departments to look urgently in the matter and take appropriate decisions which are beneficial to industry at large.

We at look forward to working in close cooperation and assure you fullest for the project of enhancing E Commerce adaptability for SMEs in grassroots level in the country.

With best Regards,

Yours sincerely,

(Somendra K Gupta)

Shri Ishtiyaque Ahmed
Director - Fc-I/Fc-Ii/Fdi Data
Department of Industrial Policy & Promotion
Ministry Of Commerce & Industry
Room No - 258 Udyog Bhawan
New Delhi

AD(SS)

CSR IMR
India-My Responsibility

PHD CHAMBER OF COMMERCE AND INDUSTRY
PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi - 110 016 (India)
Tel. : +91-11-2686 3801-04, 49545454, 49545400 - Fax : +91-11-2685 5450, 4954 5451
E-mail : phdcci@phdcci.in - Website : www.phdcci.in

S. No.	Question	Pros	Cons
1	**Should FDI be allowed in B2C e-commerce?**	Allowing FDI in B2C e-commerce is the logical next step to allowing FDI in retail. The three benefits of FDI in B2C e-commerce are: a. More choice and convenience for consumers b. More investments in to the logistics sector, which in turn will generate employment and add to tax revenues c. Allow local investors in B2C e-commerce ventures to raise investments/sell stake to grow their ventures FDI in general helps the Indian economy to grow at a faster pace as citizens across the country can buy and sell products seamlessly. B2C e-commerce would especially be of advantage to citizens who are not situated in major urban centres. If done correctly, the opening up of FDI in e-Commerce could provide a boost to certain small and medium enterprises. But	There is grave concern that FDI in B2C e-commerce will allow large inventory-based players to set up online stores which could potentially impact the Indian SME and self-organized retail sector(or hawkers), which generates employment for 40% India's population. The argument for allowing FDI in B2C e-commerce to support the logistics infrastructure sector is also incorrect since: a. India already allows 74% automatic FDI in the air transport sector b. 100% FDI is allowed in the logistics sector c. The Indian logistics industry is growing at 20% YOY The concerns of local investors in B2C e-commerce ventures in wanting to raise investments/sell stake to grow their ventures is genuine. Despite FDI presently not being allowed, investments of approximately INR 1000 crores had already entered the Indian market. Therefore, FDI may not necessarily be the solution. For this segment, capital

		government must be cautious to ensure that the micro- and small sectors particularly involved in the farm-related sector need to be protected for some more time. Therefore adequate safeguards must be taken so that the positive effects may balance the negative ones and the traditional retailers coexist even after big foreign e-tailers enter the market.	options should be examined. Finally, on the matter of choice, it should be kept in mind that with low internet and credit/debit card penetration, it is still some time away that the average middle-class Indian citizen will shop regularly online. Thus, as India's broadband and banking infrastructure grows, e-commerce will also grow. Therefore until basic infrastructure issues are dealt with, an enabling policy on FDI in B2C e-commerce will not be of much use. There are gaps visible even in capacity offered by the banking and telecom sectors, which are crucial for fulfilment of e-commerce. An inability to provide adequate capacity, especially when demand is peaking, could also lead to unsatisfied customers and a sullied reputation for e-commerce, which can be potentially ruinous for an emerging industry (eg. call/SMS drop rates, payment gateway failure rates etc.) E-commerce needs a completely independent policy regime, one that is distinct from the existing policy on FDI in multi-brand retail. This is so because the industry has a completely different set of conditions governing it - markets, payments systems, financing patterns, technology, tax laws, competition laws,

			regulatory constraints, the nature of the supply chain, intellectual property rights etc. Data protection laws also need significant strengthening through audit and dynamic monitoring. Online data put up by the consumer should be protected by the custodians of that data. Fraud in online transactions is still viewed as an isolated incident whereas the legal framework must be made watertight to include e-commerce driven fraud. Simultaneously, the regulatory context needs to be defined for allied sectors such as banking and telecommunications which support the e-commerce business or directly affect the e-commerce business E-commerce is still a nascent industry in India and constitutes a minuscule portion of the entire retail industry in the country (Estimated revenues from the e-commerce online retailing in India is at USD 15 billion by 2015 and USD 125 -160 billion by 2025). This then reaffirms the need to calibrate policy carefully for an industry that is on the threshold of exponential growth.
2	**Should it be open for all products or only for non-**	PHD Chamber suggests that FDI should be allowed in B2C e-commerce for non-essential	FDI in B2C e-commerce may be undertaken to exploit new markets. The general implication is that

	food products?	(or luxury) products initially.	host countries with larger market size, faster economic growth and higher degree of economic development will provide more and better opportunities for these industries to exploit their ownership advantages and, therefore, will attract more market-oriented FDI.
3	**Should a limit for minimum capitalization be laid down?**	Yes, minimum capitalization requirements is desirable since this will keep away non-serious players.	PHD Chamber suggests that a feasible alternative for preventing a mushrooming of fraudulent e-commerce entities is to mandate that every e-commerce unit to register itself with the different payment gateways. Failure to do so will result in payment gateways blocking transactions. This one-time registration also has the possibility of even simplifying the tax payment process.
4	**Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**	If FDI is allowed in B2C e-commerce for non-essential (or luxury) products then there need not be any minimum threshold on sourcing locally. However, if the Government of India decides to open FDI in B2C e-commerce to all sectors, then PHD Chamber welcomes minimum 30% of the value of procurement of processed product to be sourced from Indian small industry.	No comments.

5	**How will retail sale under MBRT be restricted to States that have agreed to open front end stores?**	At present, India's FDI policy restricts e-commerce companies from offering services directly to retail consumers. At present, 100 per cent FDI is allowed in business-to-business (B2B) e-commerce but not in retail trading. To maintain parity, those with MBRT license should only be allowed to sell B2C in those states where they have stores.	Small time kirana stores remain the largest source of employment in the country. Opening B2C e-commerce on inventory based model is likely to impact shopkeepers and lead to unemployment.
6	**What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**	FDI should be restricted to non-essential/high-end products and capped at 26% initially.	No comments.
7	**What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers,**	Allowing FDI in B2C e-commerce will not increase low internet penetration nor help improve financial or logistical infrastructure, as FDI is already allowed in all the three industries. Approx. INR 1,000 crores has already entered the Indian e-commerce space through indirect routes. Opening up FDI in B2C e-commerce will ensure that a similar sum can enter India over the next 3 years. However, beyond that growth will be difficult unless basic infrastructure is improved.	No comments.

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	ease of operations etc.)		
8	What should B2C e-commerce encompass- -Goods -Services -Intellectual Property	FDI in B2C e-commerce in non-essential products can include all three: goods, services and IP.	No comments.

Subject: Discussion paper on e-commerce in India - seeking comments/views
To: ahmed.i@nic.in <ahmed.i@nic.in>
Date: 02/01/14 08:57 PM
From: prem raj <prem_raj@msn.com>

Respected Sir,

I apologize for writing late.

Bul as small e-commerce retailer I too knew very late about the opinion being galhered from e retailers about FDI.

As per my view FDI should be allowed in the better interest of consumers. However local retailers are not going to be get impacted.

An e-buyer is attracted to e retail for few things - non availability in local vicinity, better price, lazy buyer not willing lo explore the near market.
All these faclors will never affect the local kirana wala or lhe baniya next door. Even if the e seller is trying to attract few customers by undercutting , its applicable to even brick and mortar shops too who announces heavy discounts on launch day or unsold old stocks as clearance sale from lime to time.

At the end of the day a customer/consumer will buy what he/she feels is genuine and worthy from bolh formats.

As of now only clever buyers are opting e shopping as they are getting things much cheaper than local shops... bul for fresh products and heavy products local shops are favourite.

Kindly consider my views while preparing the report.

Regards

Premraj

http://slores.ebay.com/keralastores

Purva Gadia

1. **Should FDI be allowed in B2C e-commerce ?**
   It has been allowed in marketplace model. E-Bay is already operating in India since 2004 and AMAZON is the new entry in 2013. Also some US $ 2.5 billion has come into Indian e-commerce companies over the last 2 to 3 years. <u>However, inventory based e-commerce should not be allowed due to the stated cons in the discussion paper.</u>

2. **Should it be open for all products or only for non-food products?**
   No. It should not be allowed at all

3. **Should a limit for minimum capitalization be laid down?**
   No. It should not be allowed at all

4. **Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?**
   No. It should not be allowed at all

5. **What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?**
   No. It should not be allowed at all

6. **What are likely benefits to Indian economy particularly in terms of-**
   - **FDI inflows (amount)** One inventory based player cannot bring more than US$ 100 million to US$ 120 million in 2 to 3 years' time
   - **Additional employment (numbers)** -- the discussion paper clearly state the cons. There will be net unemployment. Some 3,000 to 3,500 jobs will be created but 50 million SME based livelihoods will be lost. Small time sellers will be impaired
   - **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)** --- Because of scale of operations, these e-commerce players in inventory based model will have more bargaining power than standalone small sellers and will resort to predatory pricing. Where is the question of efficiency? India cannot afford this

PriceWaterhouseCoopers Pvt. Ltd.

Discussion paper on FDI in B2C E-commerce – Comments from stakeholders

Sl No.	Question	Comments
1	Should FDI be allowed in B2C e-commerce?	FDI in B2C e-commerce should be allowed as it will open a wide range of opportunities for various stakeholders in the e-commerce ecosystem as well as it will benefit the economy as a whole in the following ways: • Increased foreign investment inflow into the country • Boost to manufacturing sector as B2C e-commerce provides a platform for domestic sale and exports to manufacturers especially SMEs who are otherwise unable to benefit from the economies of scale through physical retailers • Enhanced growth of back-end infrastructure supporting this sector i.e. logistics/ transportation facilities, IT/ITES service providers, warehousing facilities etc. which would further promote employment generation for skilled and unskilled labor • Parity to rural and urban population in terms of similar opportunities and choice of products alongwith competitive pricing of products due to enhanced reach and large demand coupled with benefits arising from economies of scale being passed on to the customers • Easy access to capital required to fuel the growth in this sector as most players struggle to raise funds domestically • Enhanced transparency in transaction processing as payments would be regulated through online gateways which would also accelerate development of payments ecosystem in the country
2.	Should it be open for all products or only for non-food products?	There should ideally be no restrictions on the product category. However, considering the sensitivities around agricultural produce and perishable nature of the goods, there could be specific provisions around e-commerce in such product categories for example, compliance with food safety norms which is a separate regulatory framework already in place
3.	Should a limit for minimum capitalization be laid down?	Considering that the Indian e-commerce industry is relatively at a nascent stage and consists mainly of newly set up ventures, any minimum capitalization requirement may pose

		challenges for such small entrepreneurs in raising capital from foreign investors. Also, due to the inherent difference in the nature of business between brick and mortar and online retail and within online retail, there exists a marketplace or an inventory led business model or services led e-commerce, conditions around minimum funding stipulations do not seem necessary. In any case, as a commercial rationale to develop its brand in India, the investor would bring requisite capital.
4.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	There should not be any sourcing conditionalities as the same would act as a deterrent in implementation of e-commerce business models. For example, in a case of e-commerce relating to digital content or services, how would the stakeholders comply with sourcing. However, if a stipulation to this effect needs to be inserted, a practicable percentage for local sourcing based on value of goods sourced could be considered in case of inventory based e-commerce without any specific criteria related to SMEs. In case a limit is prescribed, procurement of supporting services like logistics and customer support etc. could also be included within the said limit.
5.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	Prescribing geographical boundaries for e-commerce players would go against the very concept of e-commerce and would be practically difficult to implement.
6.	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To provide the required boost to this sector, FDI could be allowed upto 100% with requirement of seeking Government approval beyond a prescribed percentage for e-commerce players engaged in inventory based business model Further, e-commerce and brick and mortar retail should be allowed to be undertaken in the same entity
7.	What are likely benefits to Indian economy particularly in terms of- a) FDI inflows (amount) b) Additional employment (numbers) c) Back-end infrastructure (amount) d) Efficiency (e.g. lower price to customers, higher price to	As discussed under point no. I above, allowing FDI in B2C e-commerce would entail the following benefits: • Impetus to manufacturers and enhanced FDI inflow into the country • Growth of back-end infrastructure resulting in increased employment opportunities for both skilled and unskilled labor • Benefits to consumers in terms of similar choice of products and enhanced reach for both rural and urban consumers and competitive pricing of products • Creation of more transparent transaction processing system in turn contributing to the

	producers/manufacturers, ease of operations etc.	objective of financial inclusion • Easy access to capital for players as compared to domestic funding
8.	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C e-commerce should encompass all three i.e. Goods, Services and Intellectual property. It may be worth considering that there could be practical challenges in distinction of goods from services as a lot of products sold or to be sold on e-commerce platforms could be available in digital formats.

Subject: E-commerce
To: ahmed.i@nic.in <ahmed.i@nic.in>

Date: 01/30/14 07:36 PM
From: rajiv.wallia <rajiv.wallia@cravatex.com>

The comments may be sent to the undersigned and/or emailed at ahmed.i@nic.in

	Question	Pros	Cons
i.	Should FDI be allowed in B2C e-commerce?	Yes	
ii.	Should it be open for all products or only for non-food products?	All	
iii.	Should a limit for minimum capitalization be laid down?	Not necessary.	
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	Not necessary.	
v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?		

vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?	Yes	868
vii.	What are likely benefits to Indian economy particularly in terms of- (a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)	All	
viii.	What should B2C e-commerce encompass- -Goods -Services -Intellectual Property	All	

2784 Homestead Rd # 235
Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

Memorandum to the DIPP on Discussion Paper on E-commerce in India

Mr. Ishtiyaque Ahmed
Director
Department of Industrial Policy & Promotion
M/o Commerce & Industry
Udyog Bhawan
New Delhi

January 24, 2014

Sub: Memorandum on Discussion Paper on E-commerce in India 2013

Dear Sir,

Apropos the advertisement where in the Department of Industrial Policy and Promotion has invited suggestions from the public on aforementioned subject, we are submitting herewith our Memorandum with comments, suggestions and critical analysis of the issue under review.

Though well-intended, the policy suffers from serious shortcomings which necessitate an in-depth and thorough review of the veracity of need for such a step in India at this point in time.

In pursuance of aforementioned subject, **Rakshak Foundation** solicits your kind permission to present this memorandum for your worthy consideration. We also request you to accord us an opportunity for oral evidence before the Department.

About Rakshak:

Rakshak is an International organization working towards increasing citizen participation and awareness in public policy issues and reforms. Rakshak, a non-profit organization, was founded by a group of concerned Indian citizens positioned globally, comprising of a team of intellectuals and socially responsible people.

In its endeavour to achieve its mission Rakshak remains current on evolving social and moral patterns of society, identifies analyses and evaluates workable solutions to harmonize these patterns, and actively shares this information with appropriate forums in government and public.

In past, Rakshak Foundation has been invited by and has made depositions to various Government Committees, Organizations and key officials:

1. Parliamentary Standing Committee on Home Affairs chaired by Smt. SushmaSwaraj [February 22nd, 2007]

2. Committee on Criminal Justice Reform Policy chaired by Shri NR MadhavaMenon [April 28th, 2007]

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Santa Clara, California, USA 95051
Phone: 403-329-1492
http://www.rakshakfoundation.org

3. Inter-ministerial committee consisting of MOIA, Ministry of Law, Ministry of Women and Child development, MEA and NCW chaired by MOIA secretary Shri Nirmal Singh. [July 25th, 2007]

4. Union Minister Vayalar Ravi, Minister for Overseas Indian Affairs [Meeting in USA: June 29th, 2006]

5. India's Ambassador to USA, Mr. Ronan Sen [Meeting in USA: January 31st, 2007]

6. Consul General of India at San Francisco [Several Representations and meetings from 2005 to date]

7. Parliamentary Standing committee on Personnel, Public Grievances, Law and Justice, chaired by Dr. E.M. Sudarshana Natchiappan [June 18th, 2008 and February 06th, 2009]

8. Select Committee on Commercial Division of High Courts Bill chaired by Dr. P.J. Kurien [February 17th, 2010]

9. Parliamentary Standing Committee on Rural Development chaired by Smt. S. Mahajan [May 19th, 2010]

10. Committee on Petitions chaired by Shri Bhagat Singh Koshiyari [30th November 2010] – Oral Evidence on the petition praying for amendments in Section 498A of the IPC, 1860.

11. Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Chaired by Smt. Jayanthi Natarajan [15th February 2011] - Public interest disclosure and protection to persons making the disclosure bill, 2010

12. Parliamentary Standing Committee on HRD chaired by Shri Oscar Fernandes [20th July 2012] – Oral Evidence on Higher Education and Research Bill 2011

For the ease of understanding this memorandum has been divided into following categories:

Part I Introduction

Part II Analytical Comments, Suggestions and Recommendations

Part III Conclusion

2784 Homestead Rd # 235
Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

Part I

INTRODUCTION

Post 1991 Economic reforms India has witnessed increased role of investors in the development of Indian economy and modern technology in the country. Foreign direct investment acts as a major medium in the development of a country through up-gradation of technical knowledge, managerial skills and financial resources. In India the E-commerce like all other sectors has witnessed a boom due to rising purchasing power, increasing access to technology and internet.

FDI in E-commerce has the potential to enlarge markets by reducing operation costs and improving supply chain in the country. But it has also raised concerns about loss in employment, predatory pricing practices, reparation of profits out of the country and so on.

The discussion paper is a welcome step towards encouraging wider debate on the issue of FDI in E-commerce sector in India. Given the importance of the policy Rakshak Foundation held consultations with several experts ranging from e-commerce industry, citizen groups, Administrative and social sector background.

During our consultations we have come across a number of issues which are of great significance with regards to the bill and we would want to bring to your notice our analysis and comments on the same.

Sl.No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?		a) FDI should not be allowed in B2C e-commerce for the time being. It would harm the interest of smaller players in the e-commerce industry. b) It would also harm the interests of smaller traders in the country which provide the bulk of employment to people in the country. c) It should be allowed in a **phased manner** over a period of 5-10 years.
ii	Should it be open for all products or only for non-food products?		a) FDI should be allowed only for non-food products. b) The MBRT policy already allows trade in non-branded agricultural products. Therefore there is no need to replicate the process.

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iii	Should a limit for minimum capitalization be laid down?	a) There is a need to lay down minimum capitalization limits as has been set in the MBRT, since it would be better to have consistent policies in both the physical and online stores. b) Minimum capitalization would also prevent the entry of non-serious players into the Indian industry and have lesser negative implications on Indian economy due to the flight of capital.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	a) Yes there should be a minimum sourcing requirement. b) This should be 50% initially for a period of 3 years and should be gradually phased out to 30%.	
v	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	a) It is not possible to ensure the same and therefore there has to be gradual phasing in of the FDI in E-Commerce to make it consistent with the MBRT rules b) Any such decision should be taken only after due consultations with the state governments	

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vi	What should the entry routes and caps be In FDI in B2C e-commerce companies? Should it be automatic up to 50%?	a) Gradual phasing in of the investment. b) 25% under FIPB route for first 3 years. c) 50% under FIPB after that	
vii	What are likely benefits to Indian economy particularly in terms of - (a) FDI in flows(amount) (b) Additional employment(numbers) (c) Back-end infrastructure(amount) (d)Efficiency		a) Would lead to repatriation of profits outside the country. b) Loss of jobs, due to shutting down of smaller traders
viii	What should B2C e-commerce encompass - - Goods - Services - Intellectual Property	It should encompass all the three categories to avoid any complications in functioning.	

2784 Homestead Rd # 235
Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

Part II

CRITICAL ANALYSIS, COMMENTS AND RECOMMENDATIONS

1. **Should FDI be allowed in B2C e-commerce**

Comments:

a) Rakshak Foundation believes that FDI in B2C E-commerce should not be allowed for the time being. Indian E-commerce industry is in a nascent stage and allowing FDI at this point of time may significantly harm the interests of smaller players. Since bigger ones would attract all the investments and may go on a predatory pricing regime.

b) Further allowing FDI in E-commerce would violate the principles underlying the policy of MBRT.

c) Additionally, it would harm the interests of smaller traders as they would be competing the more organized and well equipped players in the marker who would have a better reach than them.

Recommendations:

a) Efforts should be made by the department to create an environment to gradually move the small traders from unorganized to organized sector.

b) Training sessions and workshops should be conducted to ensure steep learning curves for these smaller traders.

c) Ensuring deeper penetration of internet, consumer awareness are some of the steps that would ensure rapid growth of Indian E-commerce industry which is currently stagnated due to lack of trust by the customers.

2. **Should FDI be opened for all products or only for non-food products?**

Comments:

a) FDI should be allowed only in the non-food products category. The MBRT policy already allows trade in non-branded agricultural products. Rakshak Foundation believes that there is no need to replicate the same in E-Commerce sector.

Recommendations:

a) Efforts should be made to ensure compliance with Model APMC Act to improve the backend infrastructure in the economy especially in the agricultural sector.

3. **Should a limit for minimum capitalization be laid down?**

Comments:

a) A limit should be prescribed for the minimum capitalization, it has already been implemented in the FDI in MBRT and the same policy should be followed in the E-commerce sector.

b) Minimum capitalization would also prevent the entry of non-serious players into the Indian industry and have lesser negative implications on Indian economy due to the flight of capital.

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Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

c) This policy of minimum capitalization should be consistent with MBRT policy and the market regulator should ensure compliance with the rules and procedures.

4. Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

Comments:

a) Indian traders have hugely benefited from the B2B E-commerce and it has helped them explore newer markets and geographies at a minimal cost. If limits are not prescribed for sourcing from domestic manufacturers it may harm the interest of smaller manufacturers in the country since they would have to compete against the foreign products which inherently enjoy the cost advantage.

b) Mandatory sourcing of products should be

Recommendations:

a) Mandatory sourcing of products from domestic manufacturers should be 50% for first 3 years and should be subsequently reduced to 30%.

5. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

Comments:

a) Rakshak Foundation believes that since E-Commerce has no strict boundaries it is not possible to restrict the retail sale to states that have agreed to the MBRT rules in principle. Allowing FDI in E-commerce and preventing the same in Multi Brand Retail Trade would amount to violation of principles of federalism in the country.

Recommendations:

a) Rakshak foundation believes that FDI in E-commerce should not be allowed unless wide consultations are held with the State Governments. It is important to take views of especially those states which have not given the permission for FDI in MBRT.

b) Gradual phasing in of the FDI in E-Commerce is the only viable step in this respect.

6. What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

Comments:

a) Rakshak Foundation believes that in the case of gradual phasing in of the FDI in E-commerce, only 25% FDI should be allowed for first 3 years under the FIPB route.

b) Thereafter more it should be subsequently increased to 50% under the FIPB route.

c) This should be made into upto 50% investment under the automatic route after a period of 5-10 years as the department may decide.

2784 Homestead Rd # 235
Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

7. What are likely benefits to Indian economy particularly in terms of:
   a. FDI inflows (amount)
   b. Additional employment (numbers
   c. Back-end infrastructure (amount
   d. Efficiency (e.g. Lower price to customers, higher price to producers/manufacturers, ease of operations etc.)

Comments:

a) **FDI inflows (amount):**
One of the reasons cited by the proponents of FDI in E-commerce is the plummeting levels of funds raised by E-Commerce companies and start-ups. Total funds raised by the e-tailers dropped to $0.5 billion in 2012 from $5 billion in 2011. Even though prima facie this argument holds true, the real reason for drop in investments seems to be the faulty policies of early players in the market.
Price wars, poor structure and functioning have all led to huge losses being incurred by the players in E-commerce sector. This has led to an environment of skepticism amongst the investors and thus the plummeting investments. The need therefore is proper regulation of the e-commerce sector.
India doesn't need goods from foreign manufacturers, since home grown companies and traditional markets may be able to do the job. Just like in BPO industry, work would be done by Indians, but profits will go to foreigners.

b) **Additional Employment (numbers):**
Indian e-commerce industry is a nascent industry and the level of development is not as desired. Due to paucity of infrastructure and resources in this industry, there is a direct threat from big giants like Amazon which may force the independent stores/traders to close which will directly lead to massive job losses, as their level isvery high, fully automated which need very few people to operate. This will lead to massive loss of jobs.

c) **Back-end Infrastructure (amount):**
There is no doubt that back end infrastructure in country needs massive investments but it should be ensured that these investments really do take place the entire exercise is not merely a lip service.

d) **Efficiency:** Even the poor sales have been attributed to poor functioning and procedures in e-commerce companies. As per a survey one of the most prominent reason for not buying online includes Risk of fake/bad quality products (55% respondents) which drives home the point that it's not lack of capital but poor procedures, lack of regulation and poor customer awareness which is hurting this industry the most.

Recommendations:

a) We believe that the industry is in need of an independent regulator.

b) Additionally, E-Commerce start-ups should be given regular guidance from the Department in form of lectures, workshops and several other exercises.

c) There is also a need to create better awareness amongst the consumers buying products online through campaigns and regular interactions

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Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

8. What should B2C e-commerce encompass?
- Goods
- Services
- Intellectual Property

Comments:

a) If the Department allows the FDI in E-commerce it should be for all the three (goods, services and intellectual property) since restriction on any one or two would unnecessarily complicate the laws and bring in more inefficiency in working of players in the industry.

2784 Homestead Rd # 235
Santa Clara, California, USA 95051
Phone: 408-329-1492
http://www.rakshakfoundation.org

Part V

Conclusions

There is no denying the fact that Indian E-Commerce industry is suffering huge losses today. Investments have plummeted in last few years and major investments are targeted towards the bigger players in the market. The biggest hit has been taken by the smaller players in the market which are suffering due to the faulty pricing practices in the industry and lack of investments.

In spite of its good intentions the proposed policy to introduce FDI in the E-commerce sectors falls short on several aspects. We at Rakshak Foundation believe that the introduction of FDI in E-commerce at this point of time may harm the interests of not only smaller players in the E-commerce industry but also affect the interests of the small traders and manufacturers which have benefited from the FDI in B2B E-Commerce model in India.

It also overlooks a few important issues like loss of jobs, predatory pricing practices, and repatriation of profits back from the country. Rakshak Foundation firmly believes the FDI in E-Commerce should be introduced only in a phased manner with strong caveats to provide protection to small manufacturers and young players in the industry.

The policy requires suggested amendments to truly achieve its intentions of ensuring free and fair functioning of e-commerce sector in the country.

With Sincere Regards,

Sachin Bansal
President, Rakshak Foundation
California, USA

Ramkrishna Basak

Mob. : +91 9433895624
e-mail : rkbasak331@yahoo.co.in
37, Shibtala Street, 1st Floor, Kolkata - 700 007

Ref :

Date :

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industrywelcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
I	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	NONE

Ramkrishna Basak

Mob. : +91-9433895624
e-mail : rkbasak331@yahoo.co.in
37, Shibtala Street, 1st Floor, Kolkata - 700 007

Ref :

Date :

		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
Ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
Iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction Is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

Ramkrishna Basak
Mob. : +91-9433895624
e-mail : rkbasak331@yahoo.co.in
37, Shibtala Street, 1st Floor, Kolkata - 700 007

Ref :

Date :

			products to cor sumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the Industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

Ramkrishna Basak

Mob. : +91-9433895624
e-mail : rkbasak331@yahoo.co.in
37, Shibtala Street, 1st Floor, Kolkata - 700 007

Ref :

Date :

		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

Ramkrishna Basak

Mob. : +91-9433895624
e-mail : rkbasak331@yahoo.co.in
37, Shibtala Street, 1st Floor, Kolkata - 700 007

Ref :

Date :

	encompass -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Subject: FDI Feedback
To: ahmed.i@nic.in

Date: 01/31/14 08:32 PM
From: Sales - Rannchhod Textiles <sales@rannchhodtextiles.com>
Sender: hiteshkasat@gmail.com

rannchhod_fdi2.jpg (182kB) rannchhod_fdi4.jpg (195kB) rannchhod_fdi5.jpg (173kB)
rannchhod_fdi_1.jpg (255kB) rannchhod_fdi3.jpg (271kB)

Dear sirs ...

Please find Attached feedback

Regards / Hitesh Kasat

— rannchhod_fdi2.jpg

Block - 4, Suit No. 3004, 7th & 8th Floor, Rathi Palace Market,
Ring Road Surat - 395002, Gujarat, India Tel : 00-91-261-4000496 /97 /98
Email : rannchhodtextiles@gmail.com

Virtual wholeselling and inventory holders for online retailers

Sl No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g warehousing), logistics (courier/postal service) c) Create additional skilled semi and even unskilled jobs in customer care (BPOs) IT and ITeS, warehousing, logistics/transportation shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts e) Create transparency in financial transactions	NONE
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to	

		boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent	885

FOR, RANNCHHOD TEXTILES
(HITESH M KABAT H.U.F.)
KARTA

— rannchhod_fdi4.jpg —

Rannchhod textiles

Block - 4, Suit No. 3004, 7th & 8th Floor, Rathi Palace Market,
Ring Road Surat - 395002, Gujarat, India Tel : 00-91-261-4000496 /97 /98
Email : rannchhodtextiles@gmail.com

Virtual wholesaling and inventory holders for online retailers

		warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering ever lower prices. A number of e-tailing	

		sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides	886

FOR. RANNCHHOD TEXTILES (HITESH M. KAKAT H.U.F.)
[signature]
KARTA

--- rannchhod_fdi5.jpg ---

Rannchhod textiles

Block - 4, Suit No. 3004, 7th & 8th Floor, Rathi Palace Market,
Ring Road Surat - 395002, Gujarat, India Tel : 00-91-261-4000496 /97 /98
Email : rannchhodtextiles@gmail.com

Virtual wholeselling and inventory holders for online retailers

		access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report 2013)	
iii	What should B2C E-commerce encompass Goods Services Intellectual Property	B2C E-commerce should encompass all three Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

887

FOR, RANNCHHOD TEXTILES
(HITESH M. KABUT H.U.F.)

KARTA

rannchhod_fdi_1.jpg

Block - 4, Suit No. 3004, 7th & 8th Floor, Rathi Palace Market,
Ring Road Surat - 395002, Gujarat, India Tel : 00-91-261-4000496 /97 /98
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Virtual wholeselling and inventory holders for online retailers

25 January 2014

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The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this ...

...e. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

FOR, RANNCHHOD TEXTILES
(HITESH M. KASAT H.U.F.)

Hitesh

KARTA

— rtannchhod_fdi3.jpg —

Rannchhod textiles

Block - 4, Suit No. 3004, 7th & 8th Floor, Rathi Palace Market,
Ring Road Surat - 395002, Gujarat, india Tel : 00-91-261-4000496 /97 /98
Email : rannchhodtextiles@gmail.com

Virtual wholeselling and inventory holders for online retailers

		stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-	To facilitate foreign investors to make substantial investments in the Indian	None.

	commerce companies? Should it be automatic up to 50%?	market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	
vii	What are likely benefits to Indian economy particularly in terms of:- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20	None

FOR, RANNCHHOD TEXTILES
(NITESH K. KABIT H.U.F.)
KARTA

Subject: **Feedback on FDI in E-Commerce**
To: ahmed.i@nic.in
Date: 02/03/14 05:57 PM
From: piyush arvind <mailtortc@gmail.com>

Dear Sir,

I have read the discussion paper on B2C e-commerce FDI and would like to give my feedback on the same:

1. Should FDI be allowed in B2C e-commerce?

No. It should not be allowed, at least in the inventory model. It is already allowed in the marketplace model to E-Bay and AMAZON. Also almost US$ 2.5 billion has come into Indian e-commerce companies over the last 3 years or so.

2. Should it be open for all products or only for non-food products?

We must not allow at all. Question does not arise

3. Should a limit for minimum capitalization be laid down?

We must not allow at all. Question does not arise

4. Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

We must not allow at all. Question does not arise

5. What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

We must not allow at all. Question does not arise

6. What are likely benefits to Indian economy particularly in terms of-

• FDI inflows (amount) We cannot expect more the US$ 100 million to US$ 125 million over 2 to 3 years period from single e-commerce company in inventory model

• Additional employment (numbers) Leave alone additional employment, there will be gross unemployment. At the most 3,000 to 4,000 new jobs will be created, but 40 million jobs will be lost with SME's.

• Back-end infrastructure (amount) Investment will be miniscule (about US$100 million to US$ 125 million) and infrastructure will be captive. So it will not help government in creating infrastructure also

• Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.) India does not have social security system like USA. We will be

fooling ourselves if we allow this FDI because unemployment and economic disparity

will be very high.

891

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Piyush Batra | Arvind Arora
Royal Trading Company
B4,Ground Floor, Express Market
Ambedkar Road, Ghaziabad
9818951183
9899685666

Subject: Feedback on FDI in E-Commerce
To: ahmed.i@nic.in <ahmed.i@nic.in>

Date: 02/03/14 05:18 PM
From: sudhir sahu <sahu_r@hotmail.com>

Dear Sir,

We have been reading the discussion paper on allowing FDI in E-commerce and following is our feedback:

Should FDI be allowed in B2C e-commerce ?

It has been allowed in marketplace model. E-Bay is already operating in India since 2004 and AMAZON is the new entry in 2013. Also some US $ 2.5 billion has come into Indian e-commerce companies over the last 2 to 3 years. **However, inventory based e-commerce should not be allowed due to the stated cons in the discussion paper.**

Should it be open for all products or only for non-food products?

No. It should not be allowed at all

Should a limit for minimum capitalization be laid down?

No. It should not be allowed at all

Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

No. It should not be allowed at all

What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

No. It should not be allowed at all

6. What are likely benefits to Indian economy particularly in terms of-

- **FDI inflows (amount)**One inventory based player cannot bring more than US$ 100 million to US$ 120 million in 2 to 3 years' time
- **Additional employment (numbers)** -- the discussion paper clearly state the cons. There

will be net unemployment. Some 3,000 to 3,500 jobs will be created but 50 million SME based livelihoods will be lost. Small time sellers will be impaired

- **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)** --- Because of scale of operations, these e-commerce players in inventory based model will have more bargaining power than standalone small sellers and will resort to predatory pricing. Where is the question of efficiency? India cannot afford this

Sudhir Sahu
9811272027
Rskrish Technology & Service Pvt.Ltd.
101A Raja House
Nehru Place , New Delhi
110019

Subject: FDi in ecommerce
To: ahmed.i@nic.in
Date: 01/31/14 02:50 PM
From: sajnee prints pvt ltd <sajneeindia@gmail.com>

1.JPG (877kB) 2.JPG (755kB) 3.JPG (723kB) 4.JPG (661kB) 5.JPG (498kB)

Hi Ahmed,

Please find our feedback on FDI in e-commerce.

From:-

Shailesh Shah

(Director)

Sajnee Prints Pvt. Ltd.

Manufacturer

& Exporter of Fancy Fabrics & Sarees

O-4800, 2nd Floor,Millennium Textile Market, Ring Road, Surat, Gujarat – 395002, INDIA.

Ph:-91-261-2321954/91-261-2312936 Fax:-0261-2328719 www.sajnee.com

Print this mail, only if you need to.

— 1.JPG —

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

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The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

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Sl No.	Question	Pros	Cons
1	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	NONE

FIRE OF PASSION IN CREATING FASHION

FOR SAJNEE PRINTS PVT. LTD.
DIRECTOR/MANAGER

O-4800, 2nd Floor, Millennium Textile Market,
Ring Road, Surat - 395 002.
Ph.: (261) 2321954, 2336717 Fax: (261) 2328719

— 2.JPG

— 3.JPG

897

			products to consumers, Irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from Inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

FIRE OF PASSION IN CREATING FASHION

FOR SAJNEE PRINTS PVT. LTD.
DIRECTOR / MANAGER

O-4800, 2nd Floor, Millennium Textile Market,
Ring Road, Surat - 395 002.
Ph.: (261) 2321954, 2336717 Fax : (261) 2328719

4.JPG

		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers In Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
	What should B2C E-commerce		

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5.JPG

	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

FOR SAJNEE PRINTS PVT. LTD.
DIRECTOR / MANAGER

Subject: FDI
To: ahmed.i@nic.in

Date: 01/30/14 05:09 PM
From: Setu Garg <setu.garg@gmail.com>

900

1. Should FDI be allowed in B2C e-commerce?

Yes

2. Should FDI be opened for all products or only for non-food products?

All products

3. Whether there should be a limit on minimum capitalization?

No

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

Yes. Only to the point where it keeps the products price competitive with the global markets. Otherwise, people will not buy it online in India. They will rather get it from abroad.

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

More options for consumers. More healthy competition driving people to offer better products and services at lower prices. They will try to innovate in products and services leading to overall innovation growth.
People will buy more due to convenience of shopping at home thereby adding to the economic growth.

8. What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

Everything. Especially electronics. Currently, very few sites offer electronic products and those which do, don't have competitive prices. eCommerce spreads by word of mouth. People who buy electronics frequently are usually the one who can influence and motivate others to go online and shop. We need to have very reliable marketplaces where products are sold at prices which are at par with the lowest one can get in the brick and mortar stores.

Have you seen woikr.com ?

Setu Garg | setu.garg@gmail.com | M + 91 901 373 1010 | W http://www.SetuGarg.com

Wholesalers of : Ethnic Clothing for Women

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

The Indian E-commerce industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

<u>B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.</u>

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
1	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g.	NONE

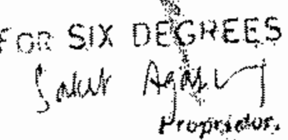
FOR SIX DEGREES

Proprietor

48D, Muktoram Babu Street, Kolkata-700007, WB, India

		warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory less processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of

FOR SIX DEGREES



Proprietor.

48D, Muktaram Babu Street, Kolkata-700007, WB, India

			products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies	None

FOR SIX DEGREES
Saket Agarwal
Proprietor.

		of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013) The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce		

FOR SIX DEGREES
[signature]
Proprietor.

	encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

FOR ... EGRESS
Sakar Agarwal
Proprietor

906

Subject: Feedback on FDI in E-Commerce
To: ahmed.i@nic.in <ahmed.i@nic.in>
Cc: sunny malhotra <sunny_malhotra2020@yahoo.com>, dinesh@softeksurya.com <dinesh@softeksurya.com>

Date: 02/03/14 02:58 PM
From: Softek Surya <softeksurya@hotmail.com>

Respected Sir,

We have gone through a discussion paper in regard to allowing FDI in E-Commerce and following is our feedback:

Should FDI be allowed in B2C e-commerce ?

It must not be allowed in inventory based model. It is already allowed in the marketplace model where E-Bay and Amazon are operating since last 9 and 1 years respectively. Also US$ 2.5 billion has come into Indian e-commerce companies over the last 3 years.

Should it be open for all products or only for non-food products?

Question does not arise. We must not allow at all.

Should a limit for minimum capitalization be laid down?

Question does not arise. We must not allow at all.

Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

Question does not arise. We must not allow at all.

What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

Question does not arise. We must not allow at all.

6. What are likely benefits to Indian economy particularly in terms of-

- **FDI inflows (amount)** Let's not fool ourselves. We cannot expect beyond US $ 120

million to US$ 130 million over 2 to 3 years from only one inventory e-comm player

- **Additional employment (numbers)** -- Unemployment created is much more than employment created. There will be 3,000 new jobs but loss of 40 to 50 million jobs over the next 2 to 3 years.

- **Back-end infrastructure (amount)** -- US $ 120 million to US$ 130 million will be cumulative over 2 to 3 years (including infrastructure)

Best Regards

Mukul Chhabra

9716833756

Softek Surya India Pvt Ltd.

SOUMIRRA FASHION PRIVATE LIMITED

No: 28 , 2nd Block , 2nd Cross , VP Layout , Begur Road , Bangalore – 560068 Ph: 080 25742218

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce Industry

The Indian E-commerce Industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricing and easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country.

Sl No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	NONE
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent stage and being driven by first	

		generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT.	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of- 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3. (c) Back-end infrastructure (amount) 4. (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce	None

		company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services	

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viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original Ideas and creative content to larger audiences.

For SOUMIRRA FASHION PVT. LTD.

Director

Subject: FDI in E-commerce B2C
To: ahmed.i@nic.in

Date: 01/30/14 08:03 PM
From: Tapas Gupta - Spareshub <tapas.gupta@spareshub.com>

Hello,

I'm of the opinion that FDI in E-commerce B2C should be allowed in India. It should be allowed for all products including food products. There should not be a limit on minimum capitalisation so that e-commerce startups can also benefit from FDI and not just the big players. Investment should be through automatic route upto 74%.

Thank you.

Tapas Gupta.

Founder - SparesHub.com
tapas.gupta@spareshub.com
+91-97301-92588

Subject: Ecom
To: ahmed.i@nic.in

Date: 01/30/14 06:59 PM
From: Sanjay Rao <sanjay@sportsnest.com>

Should FDI be allowed in B2C e-commerce?

Yes. FDI should be allowed B2C e-commerce should

Should FDI be opened for all products or only for non-food products?

For all Products

Whether there should be a limit on minimum capitalisation?

No

Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

Yes to an extent of 15%

What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

Yes. FDI be allowed under an automatic route up to 50

How will retail sale under MBRT be restricted to States that have agreed to open front-end stores?

No.

What ?are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

Better Service for consumer

Greater Infrastructure

Additional employment

Better Back end Infra and Efficiency

What should B2C e-commerce cover – Goods, Services and/or Intellectual Property?

Goods, Services and Intellectual Property

Thanks & Regards

Sanjay Rao

www.sportsnest.com |No. 21/2, 1st Floor,

Prathibha Complex, Uttaradhi Mutt Road, Basavanagudi,

Next to Bank of Maharastra, Bangalore - 560004

Mobile: +91 95389 25437 | Landline: +91 80 26257200/31/32 |Email: sanjay@sportsnest.com

Subject: Regarding FDI
To: ahmed.i@nic.in <ahmed.i@nic.in>

Date: 02/02/14 07:33 PM
From: sudhir taneja <tanejask2004@yahoo.com>
Reply-To: sudhir taneja <tanejask2004@yahoo.com>

25 Ja

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		logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	
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vii	What are likely benefits to Indian economy particularly in terms of-	1) Liberalisation of the sector could see hundreds of millions of dollars in	None

	(a) FDI inflows (amount) (b) Additional employment (numbers) (c) Back-end infrastructure (amount) (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20 warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percent of the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers. The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits to end consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the	917

		desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 and Tier 3 cities as well as by consumers in rural areas shows that E-commerce provides access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013).	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property. With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

Thanks and regards,

Sudhir Taneja
New Delhi
+919810041375
+919711252870

Subject: FEEDBACK ON FDI IN E-COMMERCE
To: ahmed.i@nic.in

Date: 02/03/14 04:03 PM
From: ashish <ashish@tanvisol.com>

Respected Sir,

We have read the discussion papers on this subject "Allowing FDI in E-commerce sector" and hereby submit our feedback:

Should FDI be allowed in B2C e-commerce ?

No. It should definitely not be allowed in the inventory based model. We have already allowed it in the marketplace model to some players like the E-Bay (since 2003-2004) and the AMAZON (in last year). Also, almost US $ 2 billion has flown into the Indian e-commerce companies over the last 2 to 3 years.

Should it be open for all products or only for non-food products?

Question does not arise

Should a limit for minimum capitalization be laid down?

Question does not arise

Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?

Question does not arise

What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%?

Question does not arise

6. What are likely benefits to Indian economy particularly in terms of-

- **FDI inflows (amount)**Will not be in excess of some US $ 100 million over from only one inventory lead e-commerce player. That also will be over a time period of 3 years or so.

- **Additional employment (numbers)** --Question dces not arise. Some 3,000 new jobs will be created but 40 million SME lead jobs will be lost. What about that?

- **Back-end infrastructure (amount)** --Even if they invest US$ 100 milion in 3 years, the backend infrastructure will be captive. How will it benefit the government?

- **Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.)**--- India does not have social security systems like the USA. Our social problems due to unemployment will be of colossal effect. We will have very deep income disparity and problems associated with it.

Thanks & Regards

Ashish Abrol

Tanvi Infosolution Pvt. Ltd.

Office:- 203-205 2nd Floor, Ideal House, 69,

Nehru Place New Delhi - 110019

☎: 011-46107125

MOB: (+91) 9971-398-958

E-mail : ashish@tanvisol.com |

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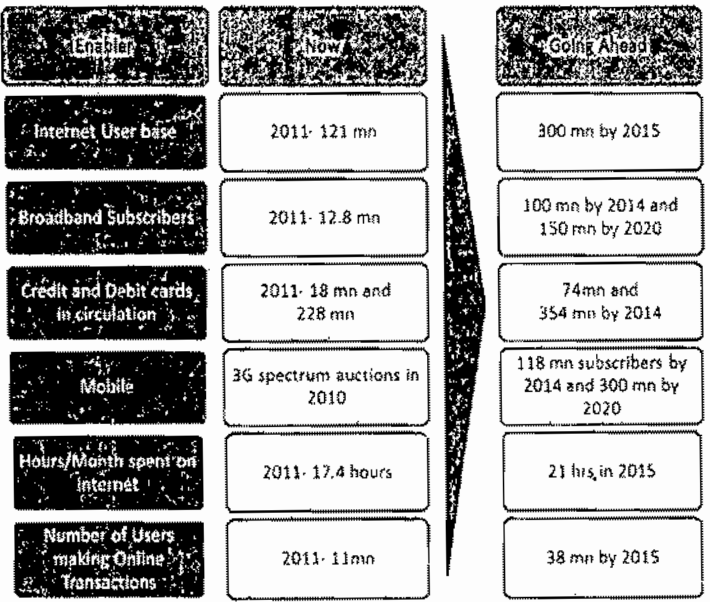
eCOMMERCE: GOOD FOR CONSUMERS, AND GOOD FOR ECONOMIC GROWTH

Fundamental Enablers for eCommerce are falling into place

eCommerce has evolved significantly today from what it was a decade ago. The Internet, key to the development of eCommerce, has made significant inroads into Indian homes. Increasing personal computer (PC) and broadband penetration, coupled with the declining prices of PCs, tablets and smartphones, has driven increased internet access and usage across cities and towns in India. Tablets and smartphone are redefining how consumers connect to the internet on the go. The adoption of 3G, coupled with the declining prices of smartphone, is expected to further drive increased internet usage in the country. Improvement in payment modes has resulted in increasing use of plastic money by Indian consumers. More secure payment gateways are helping strengthen consumer confidence in carrying out online transactions. These enablers augur well for the development of eCommerce in India.



Enabler	Now	Going Ahead
Internet User base	2011- 121 mn	300 mn by 2015
Broadband Subscribers	2011- 12.8 mn	100 mn by 2014 and 150 mn by 2020
Credit and Debit cards in circulation	2011- 18 mn and 228 mn	74mn and 354 mn by 2014
Mobile	3G spectrum auctions in 2010	118 mn subscribers by 2014 and 300 mn by 2020
Hours/Month spent on internet	2011- 17.4 hours	21 hrs in 2015
Number of Users making Online Transactions	2011- 11mn	38 mn by 2015

Source: Ernst and Young report, "Rebirth of ECommerce in India"

As such, eCommerce or Digital Commerce presents an immense opportunity to all the key stakeholders:

- Consumers
- National Economy

The Changing Face of Indian Consumer

India's increasingly young population and growing percentage of women in the workforce demand the convenience of saving time and avoiding commuting problems, getting quality goods at lower prices, and access to a wider assortment of products so they can save time and money, and live better. Under

such circumstances, eCommerce has the potential to become the preferred mode of shopping for consumers nationwide. This potential is underscored in strong fundamentals:

Increased penetration of internet and smartphones: There is an uptrend in the penetration of internet and Smartphone adoption, including into the smaller towns of India and among the less prosperous.

Smaller urban centers fuelling growth: Of the 120 million internet users in the country, the urban user base has increased over 30% while user base in towns with a population of less than 0.5 million has increased by more than 60%. This is more than top eight metros put together.

Mobile phone emerging as the preferred device to access internet: 26.3 million or 22% of active internet users in urban cities access internet through their mobile phones. This has been the most recent change in access behavior.

Younger consumers and Smartphone users driving usage: Up to 75% of active user base is comprised of school or college students. India has 3 million plus smartphone users, of which 56% access internet multiple times a day, compared to 53% in US. Over 75% of Indian internet consumers visit social networking sites on their smartphones as compared to 54% in US, and up to 81% of Indian internet consumers access e-mail on their phones as compared to 73% in the US.

Source: TCS and FICCI report, "Driving Indian Consumption through Multichannel Retailing"

A new growth opportunity for the Economy

So far, India's internet story has been limited to tickets, virtual goods and services – bus and rail tickets, classifieds and ringtones. eCommerce had been slow to take off, primarily due to issues like lack of connectivity, low consumer trust, fewer supply chain capabilities, lack of integrated front end / back end experience and complicated payment solutions. With some of the fundamental issues in connectivity and payment solutions being identified and resolved, and with others such as need for supply chain capabilities and integrated front end / back end solutions being high on priority list of companies to solve for, **the backbone that enables consumers to buy online using eCommerce is being strengthened,** and this **presents a new growth opportunity for the Indian economy as a whole.**

However, two impediments to the full benefits of eCommerce still exist in the form of minimum capital requirements for enterprises and local sourcing requirements. eCommerce has the potential to be a force in increasing consumption across the country with the rise of a sizeable class of Internet-habituated consumers. and creation of an ecosystem essential for the growth of eCommerce. In economies with advanced eCommerce industries, the sector has generated employment, facilitated growth of allied industries, promoted entrepreneurship and reduced transaction costs for both suppliers and consumers.

Generating Employment: eCommerce generates employment in the areas of fulfillment infrastructure, third party delivery infrastructure and technology infrastructure, all of which are the core of running a successful eCommerce operation.

Facilitate Growth of Allied Industries: In order for an eCommerce operation to run successfully, merchandise suppliers, Infrastructure & service provider firms in the fields of logistics, warehousing,

banking, technology, and marketing, and people talent that works in the industry are crucial. As such, this creates opportunity for a whole adjacent set of industries to emerge on the strength of a fledgling eCommerce operation.

Promote Entrepreneurship: Many of the world's leading eCommerce businesses were start-ups a few years ago. They created enabling conditions for entrepreneurship across the entire e-tailing value chain for start-ups wanting to provide customers easy access to markets (new and existing), thereby enabling a plethora of merchandise vendors to sell directly to customers. Local, regional businesses can now directly sell to consumers and fulfill products. In addition, eCommerce also enables smaller vendors in towns and cities to purchase inventory when there is customer demand for products rather than hold a lot of inventory in their store and tie up capital.

Reduce Transaction Costs: Given the unique nature of selling products in eCommerce via a model that stores merchandise in many warehouses spread across the country rather than on every nook and corner of the street, the business model has an ingrained ability to reduce transaction costs. Cost reductions in distribution of goods, use of leverage (credit) in supply chain and reduced uncertainty of tax receipts are some of the benefits.

China: A Case Study

While the Indian market is still trying to absorb the dramatic possibilities of shopping through eCommerce, eCommerce in China has grown ahead by leaps and bounds due to congenial policy. As the adjacent graph depicts, in 2011 India had 8 million broadband accounts against China's 120 million broadband accounts.

China has the world's largest number of broadband accounts— and great potential for further growth
2011 broadband usage

	Number of residential broadband accounts (Million)	Broadband penetration (%)
China	129	30
United States	81	66
Japan	27	55
Germany	22	59
France	21	77
United Kingdom	18	67
Russia	18	35
South Korea	15	91
Brazil	14	26
Canada	11	78
Mexico	9	33
India	8	3

SOURCE: Pyramid Research; McKinsey Global Institute analysis

During 2006-2011, China became the second largest eCommerce market in the world. **China identified e-commerce development as a goal in its 12th Five Year Plan with the strategic objectives of leveraging eCommerce to increase domestic consumption, help stabilize prices, and advance expansion in the middle and western regions.** During this period, China also focused on promoting innovative business models, protecting customer rights, increasing logistics capabilities and setting higher industry standards in quality and IPR protection. In order to enable businesses, both international and domestic, China created favorable business environment and government service to help businesses overcome country specific challenges.

Accessibility: Like India, China's tier-2,3,4 towns have underdeveloped bricks and mortar retail, providing great opportunities for eCommerce to develop, and for consumption and the economy to grow.

Efficiency and cost reductions: Apart from unlocking consumption, eCommerce is unleashing a new breed of small and medium enterprises (SMEs) and entrepreneurs that serve both big eCommerce companies and end consumers. This helps to bring efficiency and modernization to the overall retail industry which benefits the economy as a whole.

Referenced Whitepapers:

1. *Ernst and Young: Re-birth of eCommerce in India (2013)*
2. *Technopak: E-tailing in India: Unlocking the Potential (May 2013)*
3. *Tata Consultancy Services: Driving Indian Consumption Through Integrated Multichannel Retailing (2012)*

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PRESIDENT
Ron Somers
U.S.-India Business Council

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January 29, 2014

Shri Ishtiyaque Ahmed
Director, Department of Industrial Policy & Promotion
Udyog Bhawan, New Delhi

Dear Mr. Ahmed:

On behalf of U.S.-India Business Council's member companies, representing leaders in all industries including Digital Economy/IT and retail sectors, I am pleased to have the opportunity to respond to the Department of Industrial Policy and Promotion's "Discussion Paper on E-commerce in India".

As the Government of India (GoI) considers this important liberalization move, we want to urge it to provide national level treatment to all e-commerce retail merchants, rather than applying state-level conditions and not put in place untenable sourcing requirements. Indeed, the GoI should allow foreign direct investment (FDI) in business-to-consumer e-commerce and it should be open for all products.

The move to bring in FDI in e-commerce would benefit the Indian consumers, businesses, and economy, while decreasing fiscal and trade deficits. Removing the restrictions on e-commerce will help India attract new investments in the form of warehouses, supply chain management, and logistics services. These infrastructure developments will further generate local employment. In addition, transactions online will provide government with the important source of revenue in the form of taxes as well as encourage the use and penetration of Internet usage across India.

As is seen in the United States, the e-commerce sector is one of the most dynamic parts of our economy. Allowing multinational firms to participate in this market, especially by facilitating cross-border data flows, will jump-start the sector's development and quickly create an environment that will further allow India's own e-commerce firms to expand and potentially reach the global market.

The size of the e-commerce market is currently over $388 billion in the Asia-Pacific region, and is growing at 30 percent per year. E-commerce also provides benefits to society, such as less traffic (as people order online rather than travel to stores), a more rounded commercial offer in terms of customer support and after sales service as well as a greater choice for rural communities. It also presents a platform for access to other services such as remote healthcare and education, while offering new and efficient ways for small domestic businesses to reach existing and new customers in their area.

Overall, we encourage the GoI to lift restrictions on e-commerce and as it moves forward with considering this liberalization, we are happy to arrange further discussions on the subject, especially as USIBC's membership includes the world's largest and most advanced e-retailers, all of whom view India as a promising destination for their respective international portfolios.

Respectfully,

Ron Somers, President
U.S.-India Business Council

1615 H Street NW, Washington, DC 20062 • Tel: (202) 463-5679 Fax: (202) 463-3173 • usibc@uschamber.com

I. USIBC proposes to lift the retail FDI Rules that restrict foreign retailers from selling directly to Indian consumers via e-commerce *without* any minimum capitalization or domestic sourcing requirements

As you know, on September 20, 2012, the Department of Industrial Policy and Promotion (DIPP) issued Press Note 5, which reformed India's foreign direct investment (FDI) regime in the retail sector by permitting 51% FDI under certain conditions in multi-brand retail. As you also know, the Government of India (GOI) had previously adopted conditional liberalization of its retail FDI rules in single-brand retail. The intent of these measures was to offer Indian consumers a wider variety of products at lower prices, and to stimulate greater development and economic growth.

Among the conditions attached to these new regulatory measures, foreign retailers were prohibited from selling directly to Indian consumers via e-commerce. It is unclear to industry whether the e-commerce prohibition was applied deliberately through the new regulatory regime or was transposed automatically with other text from the original set of rules.

Certainly, the Government of India should allow FDI in business-to-consumer e-commerce and it should be open to all products, without any restrictions. Moreover, there should not be a limit for minimum capitalization and instead, the industry should be allowed to invest according to its own calculations, which would inevitably benefit the Indian consumers and economy. By placing a limit for minimum capitalization, the policy will ultimately thwart investments into the country, rendering the liberalization ineffective. On the same note, there should not be any domestic sourcing requirements, as this prescriptive approach would limit investment and ultimately harm India's FDI goals.

II. USIBC urges the Indian government to *not* apply any state-level restrictions on e-commerce and allow 100% FDI in the sector

As the Department of Industrial Policy and Promotion considers lifting restrictions on e-commerce, it should do so without applying any state-level conditions. Instead, it should liberalize e-commerce in India by providing national level treatment to all e-commerce retail merchants.

In order to the Government of India to bring 21st century good and services into the country and to considerably increase foreign direct investment, it should allow 100% FDI in e-commerce. It is through unrestricted e-commerce that the Indian government and its citizens will see the maximum benefits.

III. Liberalized E-Commerce Would Benefit the Indian Economy

Removing the restrictions on e-commerce would strengthen India's economy as a whole. At the outset, it would invite more FDI, as international retailers take advantage of the market-opening reform. Foreign Direct Investment in this sector is expected to contribute around four percent of GDP by 2020, especially as it has the potential to attract hundreds of millions of dollars in investments from as little as one or two companies and several millions of dollars in infrastructure. *(Source: KPMG)* Certainly, the new investments would materialize in the form of warehouses, supply chain management, and logistics services. A surge of FDI

would be especially useful today, considering the weakness of the global economic climate. Furthermore, as foreign retailers contribute more FDI to build India's infrastructure, the GOI would encounter less pressure to spend its own funds on such projects. Consequently, the GOI would gain the fiscal flexibility to devote funding to other projects or to deficit reduction.

Additional expansion would result from the online generation of more retail transactions. This phenomenon has already been witnessed in China, where the advent of e-commerce has triggered a dramatic rise in the number of on-line shoppers and the volume of sales, thus acting as a catalyst for economic growth. For example, China's liberalization of the e-commerce industry has led to a compounded annual growth rate of 120 percent for 10 years and its online business-to-consumer e-commerce reached $26 billion by the 3rd quarter in 2013. *(Source: McKinsey and Company, Velasia)*

Beyond the basic prospects for economic growth, liberalized e-commerce would help fulfill India's development goals:

1. E-commerce involves significant investments in **supply chain and warehousing** since inventory of up to three months is often required. Most warehouse/fulfillment centers for e-commerce companies are established outside the municipal limits, which lead to development in semi-urban and rural areas. They also generate local employment, both within and supporting the center, including in areas of customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, and administration. Some indicative figures are:

    a. In a warehousing business, an average warehouse/fulfillment center of one lakh square feet size would require approximately 300-500 employees, direct or contract, to operate and manage it. Thus, if e-commerce is allowed to flourished to the projected size, the liberalization would create approximately 0.25 million jobs. Subsequently, customer care (BPOs), IT, ITeS, logistics and transportation, along with shipping and administration for e-commerce would create 1 million jobs by 2021. *(Source: Technopak)*

    b. In transportation and logistics, for an e-commerce company operating in even remote areas, over a period of three to five years, it is estimated that a workforce of several thousand employees could be engaged in managing transportation services offices, deliveries, and related administrative services (this does not take into account business that will be generated for third party delivery service providers including the Indian Postal department).

2. **Transportation, delivery, and logistics** are integral to e-commerce operations as customer experience revolves around the delivery experience. This guarantees investment by way of facilities, vehicles and offices in multiple locations, as well as providing employment and job training (including in computer technology) to unskilled or low-skilled workers.

3. There is an automatic boost to the **software industry** in India as the e-commerce sector grows and is liberalized due to the increasing development and management of online platforms. There will be a need for software to support e-commerce operations, including introduction of automated systems to track and monitor

inventory, as well as to transport, and deliver goods from the manufacturer to the customer. According to some estimates, customer care (BPOs), IT and ITeS, warehousing, logistics and transportation, as well as shipping and administration for e-commerce would create one million jobs by 2021.

4. Retail demand on a scale of India's population is potentially vast. Over time, the burgeoning demand would help **incentivize international competitors to build factories in India** so their products could be shipped more quickly to the market. This manufacturing activity would, in turn, create manufacturing jobs, and by extension, help fulfill India's national manufacturing goals. As a result, many goods not manufactured in India today could be made there in the future. Transfers of technology and expertise would naturally accompany the new e-commerce investments.

5. The growth of a **manufacturing** base would do more than accelerate India's development. It would also boost exports. In fact, as India expands its capacity to produce retail goods, it could transform from an importer to an exporter of such goods. India has already proven its superior ability to meet the global demand for automobile production. It could achieve the same dominance in all other sectors of manufacturing. In the process, it would also help close the nation's current accounts deficit. Other developing Asian economies have already enabled numerous companies to export through domestically-hosted global websites. India could do the same.

At the macroeconomic level, increased productivity translates to a higher GDP. India has recognized that it requires a high rate of GDP growth to meet its economic goals.

IV. Liberalized E-Commerce Would Benefit Indian Consumers

India's national broadband deployment plan is to bring Internet access to all of India. The technology offers, *inter alia*, more advanced communications, wider dissemination of news and information, social networking capabilities, and a platform to engage in e-commerce.

With their existing experience in delivering world-class e-commerce, multinational firms can play a particularly helpful role in encouraging the development of this powerful consumer tool.

E-commerce is extremely beneficial to consumers. It enables them to engage in instantaneous and widespread comparison shopping, so they can find a broader variety of goods at the highest possible quality and lowest prices. This extra purchasing power directly promotes the goal of inclusive growth. When Indian consumers buy from foreign on-line retailers today, they must go through a web-based intermediary, which serves no meaningful function other than to raise the price. On-shore transactions help Indian consumers, increase transparency, and benefit the exchequer.

Anyone with broadband access can "shop" at a virtual retail store without the need to purchase a subscription or membership, travel to a store, buy a minimum amount of goods, or pay in cash. In this respect, e-commerce levels the playing field and is a great catalyst for purchasing consumer goods.

E-commerce is especially useful for consumers outside major urban centers. Many of these individuals cannot readily travel to retail outlets in major cities, let alone foreign countries. However, e-commerce could literally bring a world of products to their doors.

In India, the travel industry alone accounts for 76 percent of the total e-commerce market segment in 2010. With the right regulatory impetus and investment, online retailing could catch up with online travel by 2015. There exists a huge potential for generating revenues for varied businesses in India by leveraging the Internet; some estimates put revenue at USD 125-160 billion by 2025. *(Source: Technopak)* Also, e-commerce could facilitate a means for buying competitive transportation options, as India has already experienced with the Indian railway's e-ticketing venture.

E-commerce provides a wide range of educational products, such as digitized books and other learning tools that would help increase the alternatives for India's burgeoning student population. This also helps with local language and regional requirements, which is a stumbling block for current brick-and-mortar retailers. However, e-tailers provide additional options and choices which further complement existing business models.

Finally, online or Internet-based purchasing also enables retailers to learn more about purchasers and their buying habits. This helps the seller customize the buying experience and recommend items that may spark the customer's interest. Additionally, allowing multinational companies to be involved in e-commerce will benefit consumers as well as bring a competitive dynamic into the market, which will help India's domestic e-commerce firms to scale up and prepare to go global themselves.

V. Liberalized E-Commerce Would Benefit Indian Businesses

Multinational e-commerce firms have played an integral role in making other industries more competitive. Indian industry could quickly avail of these lessons if multinational e-commerce firms are able to operate in the market. Liberalized e-commerce would benefit Indian businesses:

1. The technology lowers barriers to entry, especially for small and medium-sized businesses that lack the capital to build physical stores or lack access to the infrastructure of India's major cities. This, in turn, results in a greater number of retailers in the mix and more robust competition.

2. Once an entrepreneur establishes an online presence, he or she can engage in automated invoicing, payment receipt, shipping and inventory management for a virtually unlimited customer base. Marketing can also be done inexpensively online. All these tools of automation reduce operating costs and thereby increase productivity, especially for businesses that use cloud computing services, which can help a business quickly and efficiently scale to larger capacities.

3. E-commerce also facilitates new market opportunities, and allows small-medium enterprises (SMEs) to access global markets. Today, an Indian supplier without e-commerce is typically stunted in the volume of goods it can sell to retailers due to limitations of geography and order fulfillment. With e-commerce, the same supplier

could transact business across any distance and leverage online tools to accelerate its back-office functions. E-commerce platforms would also support the small exporter's supply chain needs, thereby providing a huge boost to the country's export sector. Indeed, according to Technopak, if the e-commerce sector is liberalized and allowed to grow, by 2021, small enterprises, firms, and freelancers will have the potential to annually earn approximately $7.5 billion.

4. Furthermore, as successfully demonstrated by the Chinese SMEs, Indian businesses could better export the nation's unique "cultural products," such as those already supported by the e-commerce platforms of the Central Cottage Industries Corporation of India and the Handicrafts and Handlooms Export Corporation of India.

VII. Summary of USIBC Views on e-Commerce

SI. No.	Question	Pros	Cons
i.	Should FDI be allowed in B2C e-commerce?	Yes	-
ii.	Should it be open for all products or only for non-food products?	It should be open for *all* products, as it will bring efficiency across the system, including in food supply chain.	-
iii.	Should a limit for minimum capitalization be laid down?	-	No; This will ultimately thwart investment in the country.
iv.	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	-	No; There should not be any domestic sourcing requirements. This should be determined by the marketplace. For example, some products, like books will be cheaper if sourced locally; however, sourcing locally for some products will not be possible. Thus, if this limitation is prescribed, it will ultimately restrict investment into the country.

v.	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	-	There should not be any state-level conditions applied. E-tailers should be given national-level treatment.
vi.	What should the entry routes and caps be in FDI in B2C e-commerce companies? Should it be automatic up to 50%	-	USIBC proposes 100% FDI in e-commerce.
vii.	What are likely benefits to Indian economy particularly in terms of – a) FDI inflows (amount) b) Additional employment (numbers) c) Back-end infrastructure (amount) d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations, etc.)	Please see our responses in: a) Section III. b) Section IV. c) Section V. d) Section VI.	-
viii.	What should B2C e-commerce encompass - Goods - Services - Intellectual Property	B2C e-commerce should encompass all products, at the same time, protecting intellectual property.	-

VIII. USIBC is Available for Further Consultations on its E-Commerce Proposal

We hope this letter provides you with the additional information you need to assess our proposal for liberalized e-commerce in India. USIBC is here to help the Government of India implement a national e-commerce policy, without state-level restrictions. We are happy to arrange further discussions on the subject. Please let me know if you would like to speak with some of their business experts.

In conjunction with this, USIBC proposes a working group, created within the Government of India, with the task of developing a concrete timeline for implementation of this proposed policy. I would be happy to arrange a call or meeting at your convenience to discuss this.

Respectfully submitted,

Ron Somers
President- U.S.-India Business Council

Vishal Hypno E-Trade

"Vishal House", Kamela Darwaja, Ring Road, Surat - 395002. India.
Tele Fax : 0261 3002222 E : sales@vhet.co.in www.vhet.co.in

25 January 2014

Feedback on the discussion paper by DIPP – Indian E-commerce industry

The Indian E-commerce industry welcomes the attempt by the government to initiate the discussion on opening B2C E-commerce to foreign investment. This is an extremely welcome move and a step in the right direction. By broadening the scope of foreign investments in E-commerce to include inventory apart from marketplace, the government would be placing the Indian industry at par with other emerging markets where both marketplace and inventory models are able to operate freely.

The effects of opening the sector to the economy will be far reaching. The liberalization of the sector will benefit the consumers (competitive pricingand easy access to rural consumers), smaller manufacturers and retailers (by removing the middlemen) and will enable the local E-commerce companies to access global expertise, finance and technology.

The Indian E-commerce industry led by first generation entrepreneurs has fueled the development of SMEs and consumer growth in tier 1 and 2 cities. Online retailing is a great contributor to the growth of manufacturing, logistics and infrastructure development. The sector has created employment opportunities for the middle and lower middle class income levels and contributed to the development of a more robust ICT sector. E-commerce is a great leveler and enables access of goods and services to both rural and urban consumers and scale as well as reach to small and large manufacturers through technology. It encourages transparency and enables inclusive growth.

B2C e-commerce can help bring in foreign exchange by selling select product categories across the globe through e-commerce. A live example of this is Utsav Fashion Private Limited. Utsav Fashion is the leading online player of Indian Ethnic Fashion (IEF) selling under its own brand, Indian Ethnic Wear, directly to customers in more than 125 countries. Many product categories which are manufactured by SMEs such as apparel, shoes, home furnishings and fashion jewelry can be directly sold to end consumers all over the world through B2C e-commerce.

The current policy restrictions in the online retail space are harmful for the local E-commerce companies and are hampering their growth. We hope that the government will consider our recommendations in liberalizing B2C online retail in the country

For VISHAL HYPNO E-TRADE

Auth. Sign/ Proprietor

Vishal Hypno E-Trade

"Vishal House", Kamela Darwaja, Ring Road, Surat - 395002. India.
Tele Fax : 0261 3002222 E : sales@vhet.co.in www.vhet.co.in

Sl No.	Question	Pros	Cons
i	Should FDI be allowed in B2C e-commerce?	YES as it will: a) Provide impetus to manufacturing, especially for the Small and Medium Enterprises (SMEs) in the country. b) Encourage development of infrastructure (e.g. warehousing), logistics (courier/postal service). c) Create additional skilled, semi and even unskilled jobs in customer care (BPOs), IT and ITeS, warehousing, logistics/transportation, shipping, etc. d) Contribute in building for a more equitable society as the rural consumer will be able to access similar products like its urban counterparts. e) Create transparency in financial transactions.	NONE
ii	Should it be open for all products or only for non-food products?	At this juncture it could be restricted to non-food products only.	The market in India has a long way to maturity for marketing of perishable items through E-commerce.
iii	Should a limit for minimum capitalization be laid down?	It could be $100m with 50% in back-end infrastructure for FDI at 51% or higher to enable foreign investment to boost infrastructure in the first tranche of 3 years. For less than 51% stake, there should be no such restriction as e-Commerce in India is at a nascent	

For VISHAL HYPNO E-TRADE
(signature)
Auth. Sign./ Proprietor

Vishal Hypno E-Trade

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Tele Fax : 0261 3002222 E : sales@vhet.co.in www.vhet.co.in

		stage and being driven by first generation entrepreneurs.	
iv	Should a limit for percentage of sourcing from domestic manufacturers be prescribed? If yes, what should be the limit?	The sourcing limit could be based depending on the level of FDI. A higher FDI could entail a higher sourcing limit like 30% while a lower FDI could entail lower sourcing limit like 20%.	The Indian industry would recommend practicable limits of domestic sourcing for the industry. It should not be restricted on the size but should be applicable to all manufacturers.
V	How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?	E-commerce players with FDI in inventory led processes can be restricted from establishing physical front end stores in states that do not support FDI in MBRT	Location based restriction is against the very tenets of E-commerce. The basic principle of Ecommerce is to provide national and global access of products to consumers, irrespective of physical boundaries.
vi	What should the entry routes and caps be in FDI in B2C E-commerce companies? Should it be automatic up to 50%?	To facilitate foreign investors to make substantial investments in the Indian market it would be very beneficial to allow 100% FDI. However the local industry appreciates the Government's efforts and would also suggest up to 51% automatic route for FDI in business to consumer E-commerce.	None.
vii	What are likely benefits to Indian economy particularly in terms of: 1. (a) FDI inflows (amount) 2. (b) Additional employment (numbers) 3 (c) Back-end infrastructure (amount) 4 (d) Efficiency (e.g. lower price to customers, higher price to producers/manufacturers, ease of operations etc.	1) Liberalisation of the sector could see hundreds of millions of dollars in investments. It would help in the creation of a more transparent funding structure for the domestic players. Further the industry will have easier access to capital. This is especially critical for the local players who are mainly first generation entrepreneurs. 2) An average warehouse of 1 to 2 lakh square feet size would require approximately 400 employees, direct or contract, to operate and manage it. Were regulatory restrictions eased the establishment of at least 15 to 20	None

For VISHAL HYPNO E-TRADE

[signature]

Auth. Sign./ Proprietor

Vishal Hypno E-Trade

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Tele Fax : 0261 3002222 E : sales@vhet.co.in www.vhet.co.in

		warehouses per E-commerce company, would have a tremendous net effect in employment generation. 3) Currently e-Commerce accounts for 15-20 percentof the total revenues for some of the big logistics companies. The revenue for logistics industry from inventory based consumer e-Commerce alone may grow by 70 times to USD 2.6 Billion (INR 14,300 crores) by 2020 (IAMAI-KPMG report, 2013). 4) B2C online retail creates economies of scale, enabling retailers to buy large scale inventory directly from small manufacturers and creating processes to store and supply efficiently to consumers. This allows the E-commerce companies to create better pricing structure ensuring competitive price for the customers and the manufacturers The e-tailing model disrupts traditional distribution supply chain and saves costs and passes the benefits toend consumers in terms of higher discounts. In fact, as the business matures, the realized efficiencies in the business and the economies of scale, allow E-commerce players to retain customers by offering even lower prices. A number of e-tailing sites offer product price comparisons which help consumers to buy the desired product at the desired price point (IAMAI-KPMG report, 2013). The share of online buying (around 50 percent) from Tier 2 andTier 3 cities as well as by consumers in rural areas shows that E-commerce provides	

For VISHAL HYPNO E-

Auth. Sign./ Proprietor

श्री ... (faint Hindi text)

Vishal Hypno E-Trade

"*Vishal House*", Kamela Darwaja, Ring Road, Surat - 395002. India.
Tele Fax : 0261 3002222 E : sales@vhet.co.in www.vhet.co.in

		access to the products and services desired by the consumers in these areas. Out of this 50 percent share, around 40 percent of the business is from consumers in Tier 2 and Tier 3 cities. Industry players also estimate that as the E-commerce reach increases, a large portion of online shoppers (more than 60 - 70 percent) would come from beyond the top 8 metros. (IAMAI-KPMG report, 2013)	
viii	What should B2C E-commerce encompass- -Goods -Services -Intellectual Property	B2C E-commerce should encompass all three; Goods, Services and Intellectual Property.With continuous technological advancements it will be difficult to create distinction between products and services as several products or goods are now available more in digital formats than the traditional physical format.	Not allowing specific formats of products will create confusion, apart from making Disallowing specific formats or excluding certain formats of products will create confusion. It will also exclude many independent creative producers of content and digital products access to online channels to promote their original ideas and creative content to larger audiences.

For VISHAL HYPNO E-TRADE

[signature]

Auth. Sign./ Proprietor

Subject Response for FDI Allowed In Ecommerce
To. ahmed.i@nic.in

Date: 01/30/14 09:06 PM
From: yosha gupta <yoshag@gmail.com>

Hi,

I would like to give my response for FDI to be allowed in ecommerce:

1. Should FDI be allowed in B2C e-commerce?

-Yes

2. Should FDI be opened for all products or only for non-food products?

-All Products

3. Whether there should be a limit on minimum capitalization?

- No

4. Should there be a limit on the percentage of sourcing from domestic manufacturers and what should be the limit?

- No

5. What should be the entry routes and FDI caps in B2C e-commerce companies. Should FDI be allowed under an automatic route up to 50%?

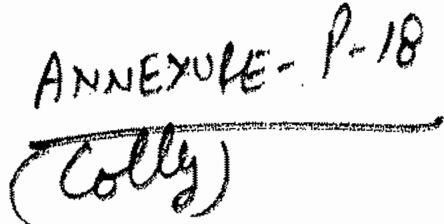
-Yes

6. How will retail sale under MBRT be restricted to States that have agreed to open frontend stores?

7. What are the likely benefits to Indian economy, particularly in terms of FDI inflows, additional employment, back-end infrastructure and efficiency?

- Achieving scale and efficiency, more employment, creating companies which can go global instead of only local

8. What should B2C e-commerce cover -- Goods, Services and/or Intellectual Property?



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Date: 25th June, 2014
Shri Amitabh Kant
Hon'ble Secretary, DIPP
Minister for Commerce and Industry,
Udyog Bhavan, New Delhi.

Subject: Request to create a simple FDI policy for Retail without segregating retail by BRANDS and CHANNELS

Dear Sir,

Greetings from Retailers Association of India (RAI)!

It is my pleasure to write to you on behalf of RAI.

Retailers Association of India (RAI) is the unified voice of Indian retailers, working with all the stakeholders for creating the right environment for the growth of the modern retail industry in India. RAI is the body that encourages, develops, facilitates and supports retailers to become modern and adopt best practices that will delight customers. RAI has a three charter aim of Retail Development, Facilitation and Propagation and conducts various programs aimed at the betterment of employees in the sector.

Under the existing foreign exchange regulations, foreign direct investment ("FDI") into companies engaged in retail trade, in any form, whether multi brand or single brand, by means of e-commerce ("B2C E-Commerce") is prohibited.

We understand that the government is currently re-evaluating the policy on FDI in B2C E-Commerce, and in pursuance of the same, the Department of Industrial Policy and Promotion ("DIPP") had issued a discussion paper on e-commerce towards the end of December 2013 to get inputs from all the concerned stake holders.

Retailers sell to end consumers using various channels including brick and mortar stores, e-commerce portals, catalogues, social media etc. Retail is the sale of goods and services to the end-user (i.e. the consumer).

Most modern retailers now focus on multi channel retail capabilities. Each retail trade channel offers its own unique opportunities and challenges and

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B S Nagesh, Shoppers Stop Ltd
Kishore Biyani, Future Group
Noel Tata, Trent Ltd.
Shashwat Goenka, Spencer's Retail
Vinay Nadkarni, Globus Stores Pvt. Ltd.
Ajit Joshi, Infiniti Retail Ltd
Atul Chand, ITC - LRBD
Bhaskar Bhat, Titan Industries Ltd
Kabir Lumba, Lifestyle International (P) Ltd
Gibson G Vedamani, Sharon Wayne Inc
Govind Shrikhande, Shoppers Stop Ltd
Jamshed Daboo, Trent Hypermarket Ltd
Pinakiranjan Mishra, Ernst & Young Pvt. Ltd.
Rafique Malik, Metro Shoes Ltd
Rakesh Biyani, Future Group
Rahul Mehta, CMAI
Shubhranshu Pani, Jones Lang LaSalle

the business process of retailers is determined by the target audience. Multi-channel retail allows retailers to expand the ways of engaging with the customers and trade with them. This goes beyond the store to include online delivery, mobile devices, phone, self-service kiosks and/or mail. Integrated multi-channel retail is about linking some or all of these channels to provide a consistent brand experience, contextual to each channel.

All permissions for FDI in retail so far have been granted with a specific clause debarring them from using e-commerce channel. Allowing FDI for only e-commerce entities will create further anomalies.

Our view is that the rules applicable to retail should be the same across channels to facilitate consumer experience and market balance.

RAI, a unified voice of Indian Retailers, has always advocated that Retail is a business that should be classified on the basis of category of goods and services provided and not on the basis of channel like brick and mortar stores or e-commerce and also not on the basis of brands like single brand or multi brands. We believe that there is a need to redefine retail formats in India. Nowhere in the world are there rules specific to single brand retail or multi-brand retail.

We therefore request your Hon'ble Government to frame a new retail policy under which segregations and FDI restrictions are not based on BRANDS (single or multi-brand) and CHANNELS (brick and mortar stores or e-commerce).

We hope that you shall receive our representation positively and would appreciate if you could grant us a meeting so that an industry delegation may meet you and benefit from your expert opinion.

For Retailers Association of India,

Kumar Rajagopalan

CEO

RAI National Council

B A Kodandarama Setty, Vivek Ltd.

B S Nagesh, Shoppers Stop Ltd

Kishore Biyani, Future Group

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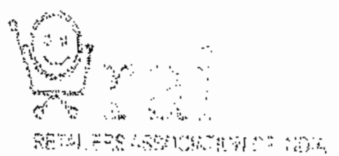

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17th November, 2014

Smt. Nirmala Sitharam
Minister of State - Independent Charge,
Ministry of Commerce,
Department of Revenue,
Government of India.

SUBJECT: **Clarification on business model and trade practices of e-tailing market place companies to find out how they are offering huge discounts.**

Honorable Minister,

Greetings from the Retailers Association of India (RAI)!

It gives me great pleasure to write to you.

Retailers Association of India (RAI) the unified voice of Indian retailers, works with all the stakeholders for creating the right environment for the growth of the modern retail industry in India. RAI, is the body that encourages, develops, facilitates and supports retailers to become modern and adopt best practices that will delight customers. RAI is the first independent body of retailers in India. RAI has a three charter aim of Retail Development, Facilitation and Propagation.

Retailers Association of India (RAI) always strives to bring best practices to the retail industry and its stakeholders. RAI's represents the Modern Retail in India. RAI has its members who vary from small and large Retailers who issue a cash memo for all purchases made from them.

RAI believes that the Retail sector is a catalyst for consumption and the development of this sector will have a multiplier effect on Employment, Real Estate, Supply Chain, Agriculture output such as Fruits & Vegetable and Staples.

The Indian Retail story presents a bright picture with most retailers on an expansion mode. However, Indian laws do not currently permit online retailers with foreign funding to sell directly to consumers.

FOREIGN FUNDING NORMS

- Foreign investment is not allowed in e-retail
- Investment rules do not make a distinction between inventory-led and marketplace model

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111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai - 400099
Tel: +91 22 28269527 - 29 Fax: +91 22 28269536 Email: info@rai.net.in Website: www.rai.net.in

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- In the marketplace model e-commerce companies define themselves as service providers and not as retailers, acting as hosts between buyers and sellers

- Wholesale trading within the group companies of an e-commerce retailer cannot exceed 25 per cent of its total turnover

Presently, the e-commerce companies operate in the market-place model where any seller can put up their products and pay a commission to them. The market-place model is basically a technology platform - in which the e-company plays a role of facilitators between buyers and sellers.

The recent deep discount offerings by market-place companies has created quite a stir in the retail market place. There is a strong possibility that these market-places have funding with FDI money and are doing deep discount as quasi-retailers.

We understand the spirit of the law that was intended to restrict the influence of foreign funds over Indian retail ventures.

The entire controversy has arisen because of ambiguities and the undefined nature of the market-place model.

There is a need to monitor and regulate online businesses to provide a level playing field for Indian retailers. We request you to issue much needed clarification on business model and trade practices of e-tailing market place companies to find out how they are offering huge discounts.

Regards,

For and on Behalf of Retailers Association of India,

Kumar Rajagopalan
CEO, RAI

RAI National Council

B A Kodandarama Setty,
Vivek Ltd.

B S Nagesh,
Shoppers Stop Ltd.

Kishore Biyani,
Future Group

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Trent Ltd.

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Spencer's Retail

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Globus Stores Pvt. Ltd.

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Infiniti Retail Ltd.

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ITC - LRBD

BhaskarBhat,
Titan Industries Ltd.

Bijou Kurien,
L Capital Asia

Kabir Lumba,
Lifestyle International (P) Ltd.

Govind Shrikhande,
Shoppers Stop Ltd.

Jamshed Daboo,
Trent Hypermarket Ltd.

Pinakiranjan Mishra,
Ernst & Young Pvt. Ltd.

Rafique Malik,
Metro Shoes Ltd.

Rakesh Biyani,
Future Group

Rahul Mehta,
CMAI

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DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION

LOK SABHA 942

UNSTARRED QUESTION NO.1266.
TO BE ANSWERED ON FRIDAY, THE 18TH JULY, 2014.

FOREIGN DIRECT INVESTMENT IN e- COMMERCE

1266. SHRI P. KUMAR:

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:
वाणिज्य और उद्योग मंत्री

(a) the percentage of Foreign Direct Investment (FDI) allowed in e-commerce activities along with the safety measures taken by the Government in this regard;
(b) the total FDI inflow in the sector since its opening along with the benefits accrued to the industry as a result thereof;
(c) the percentage of its contribution in India's economy at present along with its expected growth by the year 2020;
(d) whether the Government proposes to ease curbs on foreign online retailers; and
(e) if so, the details thereof?

ANSWER

वाणिज्य और उद्योग राज्य मंत्री(स्वतंत्र प्रभार)(श्रीमती निर्मला सीतारमण)
THE MINISTER OF STATE (INDEPENDENT CHARGE)
OF THE MINISTRY OF COMMERCE AND INDUSTRY
(SHRIMATI NIRMALA SITHARAMAN)

(a): As per extant FDI policy, FDI up to 100% under the automatic route is permitted in B2B e-commerce activities. The present policy does not permit retail trading, in any form, by means of e-commerce, for companies with FDI engaged in the activity of single/multi brand retail trading.

The following announcement in respect of FDI with reference to manufacturing sector was made by FM during his Budget Speech on 10.07.2014:

"FDI in the manufacturing sector is today on the automatic route. The manufacturing units will be allowed to sell its products through retail including E-commerce platforms without any additional approval".

Government takes into consideration the concerns of all stakeholders including domestic industry and consumers while formulating FDI policy. Safeguards are put into the FDI policy wherever necessary.

(b): The total FDI inflow in the sector from April 2000 to April 2014 is US $ 37.10 million.

(c): Total FDI equity inflows during April 2000 to April 2014 in E-Commerce into India is at US$ 37.10 million, being 0.02% of the total FDI equity inflows of US $ 219,286 million. No targets are fixed for FDI inflows, nor is an assessment of future inflows possible, as FDI is largely a matter of private business decisions.

(d): No, such proposals have been initiated.

(e): Does not arise.

****

-------- Original Message --------

ANNEXURE-R-20

943

From: "**Sushant Sudan**" <sushant.sudan@nic.in>
Date: Apr 28, 2015 2:16:57 PM
Subject: Stakeholders Consultation on Review of FDI Policy on e-commerce Sector
To: avinashdalal@hotmail.com, csrao@assocham.com, ankit.sharma@assocham.com, teamcait@gmail.com, arunima.sharma@cii.in, info@ecai.co.in, ecommercecoalition@gmail.com, shilpa.gupta@ficci.com, abhishektayal@fieo.org, sg@fisme.org.in, kalyan@iamai.in, arvind@indiavcz.org, Bishakha@nasscom.in, phdcci@phdcci.in, info@rai.net.in, gaurav@rai.net.in, nmehra@usibc.com
Cc: ahmed.i@nic.in

Sir/Madam

A stakeholders consultation on FDI policy on e-commerce sector is scheduled to be held on 14/05/2015, at 11:30 A.M in Room No.47, Udyog Bhawan, New Delhi under the Chairmanship of Hon'ble Minister of State for Commerce & Industry (I/C).

2. You are requested to attend the said meeting. A confirmation of your participation may be forwarded by May 05, 2015 to the undersigned at the email id sushant.sudan@nic.in. It is requested that a delegation representing an organization should not have more than 3 representatives. Name(s) of representative(s), their designation in the organization and vehicle number may also be provided in order to facilitate entry into Udyog Bhawan,

--
Regards

Sushant Sudan
Assistant Director
FC Division
D/o Industrial Policy & Promotion
M/o Commerce & Industry

Tel: 23063148

--
Regards

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Sushant Sudan
Assistant Director
FC Division
D/o Industrial Policy & Promotion
M/o Commerce & Industry

ANNEXURE-P-21

RETAILERS ASSOCIATION OF INDIA

945

12th May 2015

Smt. Nirmala Sitharaman,
Minister for Commerce and Industry,
Udyog Bhavan,
New Delhi.

Subject: Stakeholders consultation meeting on FDI policy on e-commerce sector to be held on 14/05/2015

Hon'ble Minister,

Greetings from Retailers Association of India (RAI)!

This is with reference to invitation for a stakeholders consultation meeting on FDI policy on e-commerce sector to be held on 14/05/2015.

RAI, a unified voice of Indian Retailers, has always advocated that Retail is a business that should be classified on the basis of category of goods and services provided and not on the basis of channels like brick and mortar stores or e-commerce.

Due to the advent of technology and increased reach to the general public through mobile and other hand-held devices, e-commerce has also reached a level of general and daily use.Multi brand retail is being achieved through e-commerce but on a defense of a marketplace model. E-commerce thus achieves the same result as that of multi brand retail in physical world.

It is our concern that, though the outcome of e-commerce and retail in physical world is the same, the treatment meted out by the Government of India to the two players in the same market is inequitable. Hence the double standard of the Government in allowing e-commerce with foreign investment in India while not allowing multi brand retail in the physical world is discriminatory.

RAI had also earlier requested the government to create a simple FDI policy for Retail without segregating retail by BRANDS and CHANNELS. We have submitted that the word "retailer" cannot be allowed to have a different meaning for players in the Internet world and players in the physical world.

RAI National Council

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CIN: U91990MH2005GAP151959

We would like to refer to the e-commerce players own submission made before the Hon'ble Competition Commission of India as recoded in its order dated 23rd April (Case no 80 of 2014) wherein para 9 , as a defense, E- commerce players contended that online and offline retail don't constitute separate relevant market as they are merely different channels of distribution which are substitutable.

E-commerce is only supposed to translate the physical world into the Internet world and therefore deserves to be similarly regulated as commerce in the physical world. Therefore we submit that due to the advent of technology, the laws which regulate the physical world deserve to be declared archaic and disregarded otherwise it would allow an undue advantage to an e-commerce player at the cost of the physical sector.

With the above background, the invitation to discuss FDI only in E-commerce is not acceptable to us and we request your Hon'ble Government to discuss FDI without segregating retail by channel like brick and mortar stores or e-commerce.

Warm Regards,

For and on behalf of Retailers Association of India,

Kumar Rajagopalan

CEO,RAI

RAI National Council

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ANNEXURE-P-22

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Birender Singh

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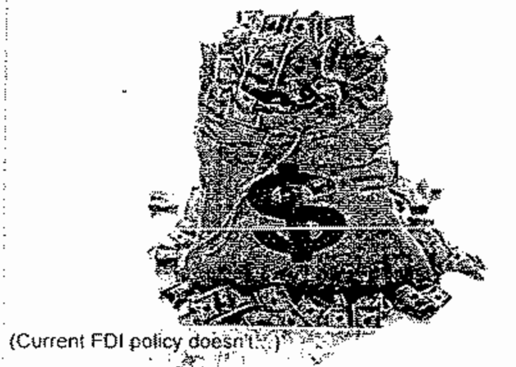
DIPP to push for FDI in e-commerce

Dilasha Seth, ET Bureau May 16, 2014, 01.49AM IST

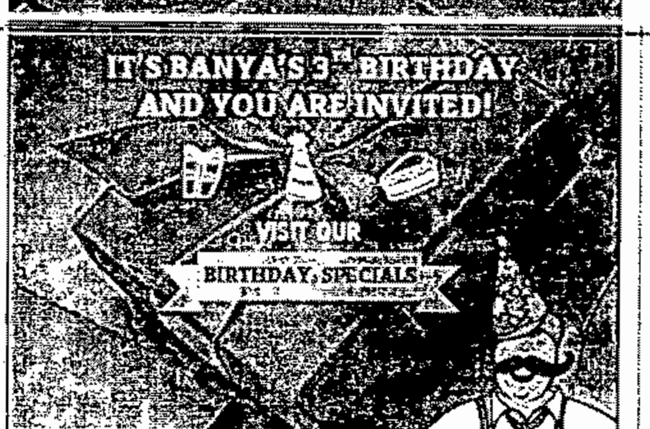
Tags: Wholesale price index | walmart | riders | open | net worth | Nasscom | KPMG | Insurability | Google | FICCI | FDI in retail | FDI | DIPP | Congress | Confederation of All India Traders



(Current FDI policy doesn't...)

NEW DELHI: The department of industrial policy and promotion (DIPP) will push for foreign direct investment (FDI) in e-commerce with the new government as part of its strategy to give an impetus to manufacturing.

DIPP held a stakeholders meeting on Thursday, a day before the election results, to firm up its views on the issue. The current FDI policy does not allow foreign direct investment in business-to-consumer e-commerce. As such, 100% FDI is allowed in business-to-business e-commerce.



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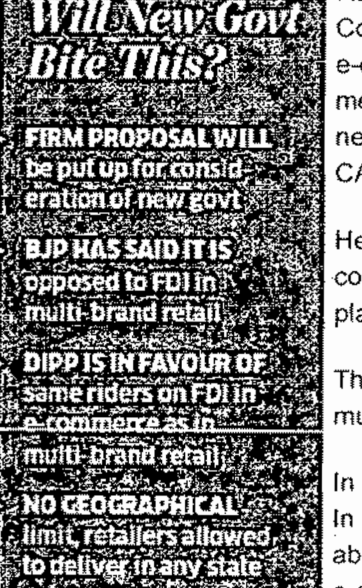
The meeting was attended by 36 stakeholders, including Amazon, Walmart, Google, Flipkart, eBay, CII, Ficci, CAIT, Fismi, Nasscom, KPMG, among others. "It was to examine issues related to FDI in ecommerce. We feel that FDI is needed in the e-commerce segment to boost manufacturing in the economy. FDI in e-commerce is required for capital infusion in SMEs," said a DIPP official.

DIPP will hold another meeting with the stakeholders in the next 10 days to formalise its view on the matter and present to the next government. This push to FDI in e-commerce comes even as the exit poll forecasts a BJP-led government after the election. BJP has on the record said it is opposed to FDI in multibrand retail.

Twelve states, mostly Congressled, had allowed foreign retailers to open front-end stores in multibrand retail, which was opened to foreign investment amidst massive opposition. The new BJP-ruled government in Rajasthan has said it would reverse the Congress government's permission. Confederation of All India Traders, which has vocally opposed FDI in retail and e-commerce, questioned the timing of Thursday's meeting. "Why was the meeting called a day before the election results. DIPP could have waited for the new government to take charge," said Praveen Khandelwal, secretary general, CAIT.



He added that they would vociferously oppose an inventorybased FDI e-commerce model as it will affect the business of small local brick and mortar players.

The department is in favour of same riders for FDI in e-commerce as FDI in multi-brand retail except for the one related to geographical boundaries.

In the current FDI policy for multi-brand retail, the final decision rests with states. In the case of ecommerce, the policy will be a national one - retailers will be able to deliver goods in any state. "We cannot have geographical boundaries in e-commerce, let us be clear on that. You do not have that anywhere in the

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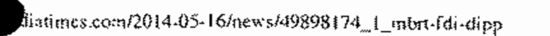


world," said the official.

The DIPP, in the discussion paper floated in January, had raised the question whether retail sale under MBRT should be restricted to states that have agreed to open front-end stores. The paper received over 100 comments. Industry surveys suggest e-commerce could contribute as much as 4% of GDP by 2020.

In the Thursday meeting, none of the MNCs had an issue with the sourcing rider. Walmart pointed out that it already sources about 95% from India while Flipkart said that it sources about 66% from India.

As per the FDI in single-brand retail policy, companies need to comply with a 30% domestic sourcing condition while in case of multibrand retail, they need to source

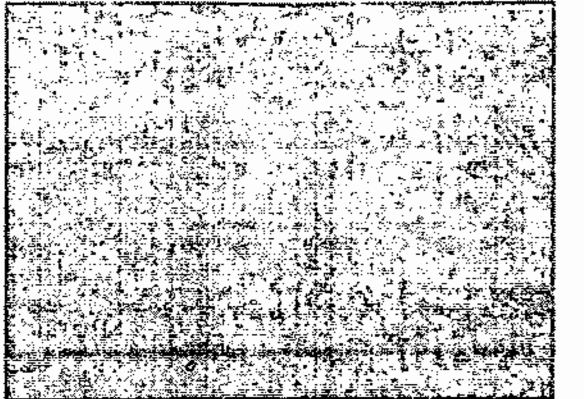
30% from MSMEs. Sources said DIPP secretary Amitabh Kant firmly supported FDI in e-commerce.

Foreign retailers like Amazon and eBay have been strongly lobbying with the Indian government to allow FDI in e-commerce. Some of India's big e-tailers such as Myntra and Flipkart are already under investigation for possible violation of FDI policy.

While MNCs pushed for an inventory-based model, domestic retail and SMEs only showed comfort over a marketplace model. "As far as the market-based model is concerned, we have no problems, and rather feel that the government should assist us in taking advantage of it. Whereas, the impact of an inventory-based model on small-scale enterprises needs to be studied," said Anil Bhardwaj of Federation of Indian Micro & Medium Enterprises.

SPOTLIGHT

One Year of Modi Govt



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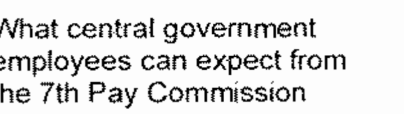

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IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

C.M.A.NO. OF 2015

IN

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

AN APPLICATION FOR AD-INTERIM EX-PARTE STAY UNDER SECTION 151 OF CPC

MOST RESPECTFULLY SHOWETH:

1. The accompanying Writ Petition has filed by the Petitioner. The Petitioner submits that the contents of the accompanying Writ Petition may be read as part and parcel of the present application and for the sake of brevity full facts of the case are not reproduced herein.
2. The Petitioners submit that the Respondents' acceptance of FDI as being legal and valid in B2C e-commerce players despite there being prohibitions in the FDI Regulations, by creating an artificial distinction between e-commerce players

with an inventory based model and e-commerce players with market place based model, creates a non-level playing field in breach of Article 14, 19,(1)(g) and 21 of the Constitution of India amongst such players and the single brand/ multi brand retail traders in the physical space who have been restricted from inviting Foreign Direct Investment.

3. The Petitioners submit that category "e-commerce activities" as mentioned in Serial No.16.2 of the FDI Regulations does not create any sub-category of e-commerce players in respect of inventory based and market place based players. The petitioners submit that since both such e-commerce players are in "retail trading", because goods are ultimately delivered/sold to the consumer, the Respondents' acceptance of FDI in such market place based e-commerce players (dehors the FDI Regulations), the Respondents deserve to be directed to provide a level playing field to the Petitioners in respect of such FDI without any restriction whatsoever.

4. The Petitioners submit that the Lok Sabha Secretariat prepared an Information Bulletin having No.LARRDIS(EF) 2014/IB-12 dated Dec. 2014 clearly allows FDI in e-commerce activities which are in the market place model without any restriction whatsoever. Thus, the petitioners also

deserve to be treated at par with such FDI in B2C e-commerce activities.

5. The Petitioners submit that the restrictions puts by the Respondents in Serial No.16.4 and 16.5 of the FDI Regulations which concerns retailers in the physical world deserve to be set aside because the Respondents while maintaining a full prohibition of FDI in e-commerce activities in the B2C sector, has sought to allow FDI in market place B2C e-commerce.

6. The Petitioners submit that the restrictions put on the Petitioners in respect of FDI in multi brand retail trade under the FDI Regulations are clearly irrational, discriminatory, arbitrary having no nexus with the objective to be achieved and in fact is anti development. The reasons provided by the Respondent as advantages for FDI in e-commerce in the discussion paper published by the Respondent, squarely applies to the Petitioners themselves as a ground for setting aside the restriction put on FDI in multi brand retail.

7. The Petitioners submit that there is no difference between retail trading and the so called market place e-commerce B2C players as mentioned hereinabove. Therefore, both cannot be treated differently with respect to FDI.

8. The Petitioners submit that the Respondents are arbitrary and illegally creating artificial distinction between different

market players when that World Trade Organization, and other Word Organization do not consider any such distinctions being applicable amongst retail traders of any mode.

9. The Petitioners submit that the Respondents have sought to allow 100% FDI in B2C e-commerce players only by terming them as "market place" players de-hors the FDI Regulations is arbitrary and discriminatory manner.

10. The Petitioners submit that foreign companies having foreign websites are allowed to operate in India with transactions between consumers and the shopkeeper through the said websites which also destroys the level playing field to which the petitioners are entitled.

11. The petitioners submit that the allowing of importation of goods from foreign countries without there being any restriction through payment mode of credit cards, debit cards etc. destroys the entire basis of the restrictions under the FDI Regulations upon the retail traders in the physical space.

12. The Petitioners submit that there cannot be any restrictions which can be sustained on FDI in the multi brand retail traders in view of the changed market situations where e-commerce is taking over the business environment in a manner that the existing businesses in the physical world are

being made unviable through infusion of unmonitored FDI into such e-commerce place.

13. The Petitioners submit that in case e-commerce players involved in the market place model are allowed to obtain FDI then to maintain parity, multi brand retail traders operating in such similar market place model also deserves to be allowed to obtain FDI without any restriction or regulation. The Petitioners therefore submits that the Respondent deserve to be directed to provide parity and remove discrimination under Article 14 of the Constitution of India.

14. The Petitioners submit that the purport of the FDI regulation is that FDI can only be invited by a company involved in e-commerce activity as a B2B e-commerce alone. The Petitioners submit that allowing of FDI in B2B e-commerce would not affect the growth of the retail sector in India, which is totally different.

15. The Petitioners submit that on the basis of the representations such entities have invited foreign direct investment within themselves and are purporting themselves to be within the law. The Respondents have also accepted the said position, and no legal action has been taken by the Government of India or by its arms against these entities.

16. The Petitioners submit that though in substance and in reality from the customers point of view, it is the e-commerce

website which is the online store for the goods being sold to him, since the order is placed on it, goods are seen on it, the deliveries are also made with the name of the online store on the package and price is paid on the website to the website, huge discounts are offered by the website to the consumer in a flat manner irrespective of the quality or quantity of goods showing very well that it is the online market place which is ultimately in control of the goods and the stocks. Therefore an online marketplace is nothing but B2C ecommerce, the Respondents have shown a complete resilience to such FDI though no provision in the FDI Policy or the FDI Regulations allows invitation of such FDI.

17. That on 28.4.2014 the Respondent No.1 invited the stakeholders to the exclusion of the retailers in the physical world for a consideration of FDI Policy on e-commerce sector on 14.5.2015 without considering the multi brand FDI policy holistically.

18. That on 12.5.2015, the Petitioners wrote back that both e-commerce and retailers in the physical world deserve to be treated at par and accordingly the consideration should be for both the players.

19. That on 12.5.2015, the Respondent No.1 issued the updated FDI Policy but there was no change in the same as regards e-commerce, single brand retail or multi brand retail.

20. That on 14.5.2015, the Economic Times reported that the Respondent No.1 had held a meeting with stakeholders in the e-commerce sector including Flipkart and snapdeal but it was positioned only as a first meeting. The Petitioners submit that their case has been totally ignored and the Respondents have refused to recognized the level playing field which both the sectors are entitled to. The Respondents have continued to have consultation in a manner that ignores the constitutional rights of the Petitioners. The Respondents cannot be allowed to create artificial compartments in retail trade by treating one set preferentially over the others. Online market place e-commerce players are equally situated as multi brand retail traders in the physical space. Accordingly, the Petitioners are entitled to the principles of natural justice before a final decision is taken by the Respondents in respect of such online players.

21. The Petitioners would suffer irreparable loss, harm and injury in case the present application is not allowed. The Petitioners have a good prima facie case on merit. No prejudice would be caused to the other side in case the present application is allowed by this Hon'ble Court.

PRAYER

In view of facts stated and submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:-

a) Restrain the Respondents from convening any meeting with regard to Foreign Direct Investment Policy with only e-commerce market players in exclusion to the physical space retail traders such as the Petitioners ;

b) pass any other order/direction that this Hon'ble Court may deem fit and proper in the facts of the present case.

FILED BY

((RISHI AGRAWALA)
ADVOCATE FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON: 18-05-15

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION

C.M.A.NO. OF 2015
IN
WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Gautam Jain son of Sh. V.K. Jain aged about 36 years, authorized signatory of the Petitioner No.1 Association, having its office at 111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai, at present at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Authorised Signatory of the Petitioner No.1 Association and I am acquainted with all the facts and circumstances of the case and I am duly authorized to swear the present affidavit.
2. That I say that I have read and understood the contents of the accompanying application and say that the facts stated therein are true and correct to my knowledge.

Gautam
DEPONENT

Verification:

I, the above named deponent do hereby verify at New Delhi on this 18th day of May 2015 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Gautam
DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION
C.M.P.NO. OF 2015
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Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Mahesh Khimji Shah, son of Sh. KHIMJI R. SHAH aged about 48 years, Director, of the Petitioner No.2 Company - Aishwarya Design Studio Pvt. Ltd., having its office at Shop No. 1, Ruby House, Irla Society Road, Opp Alfa – 3,Vile Parle (East), Mumbai- 400056, at Presently New Delhi do hereby solemnly affirm and state as under:

1. That I am the Director of the Petitioner No.2 Company and I am acquainted with all the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That I say that I have read and understood the contents of the accompanying application and say that the facts stated therein are true and correct to my information as derived from the record of the case.
3. That I say that the annexures annexed to the Writ Petition are true copies of their respective originals.

For AISHWARYA DESIGN STUDIO PVT. LTD.
M.K. Shah
DEPONENT Director

Verification:

I, the above named deponent do hereby verify at New Delhi on this 18th day of May 2015 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

For AISHWARYA DESIGN STUDIO PVT. LTD.
M.K. Shah
DEPONENT Director

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY ORIGINAL JURISDICTION

C.M.A.NO. OF 2015

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IN THE MATTER OF:

Retailers Association of India & Anr. ...Petitioners

Versus

Union of India & Ors. .. Respondents

APPLICATION ON BEHALF OF THE PETITIONER FOR EXEMPTION FROM FILING ORIGINAL/ CERTIFIED COPY AS WELL AS TYPED/DIM COPIES OF THE ANNEXURES ANNEXED WITH THE WRIT PETITION

MOST RESPECTFULLY SHEWETH:

1. The accompanying Writ Petition has filed by the Petitioner. The Petitioner submits that the contents of the accompanying Writ Petition may be read as part and parcel of the present application and for the sake of brevity full facts of the case are not reproduced herein.

2. The Petitioners submit that the original/ certified copies of the annexures annexed in the Writ Petition are readily not

available with the Petitioners. The petitioners are filing the true copies of Annexures. However, the Petitioner undertakes to file the certified/ original copy of the annexures as and when directed to do so by this Hon'ble Court. In these circumstances, the Petitioners crave leave of this Hon'ble Court to exempt the Petitioners from the filing original/certified copies of the Annexures.

3. The Petitioners submit that the annexures/ documents filed by the petitioner along with the Writ Petition are legible copies and no inconvenience would be caused to Their Lordships while going through the same. However, in any case the petitioner undertakes to file the typed copy of the annexures if so required by this Hon'ble Court.

3. The present Application has been made *bona fide* and in the interest of justice. The balance of convenience is in favour of the Petitioner and against the Respondent. If the order as prayed for is not granted, the Petitioner would suffer irreparable loss and injury.

PRAYER

In view of facts stated and submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:-

a) exempt the Petitioner from filing original/certified copies of the Annexures annexed with the Writ Petition;

b) exempt the Petitioner from filing typed copies of the typed/ dim annexure/ documents annexed with the Writ Petition;

b) pass any other order/direction that this Hon'ble Court may deem fit and proper in the facts of the present case.

FILED BY

((RISHI AGRAWALA)
ADVOCATE FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON: 18-05-15

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C.M.A.NO. OF 2015
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AFFIDAVIT

I, Gautam Jain son of Sh. V.K. Jain aged about 36 years, authorized signatory of the Petitioner No.1 Association, having its office at 111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai, at present at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Authorised Signatory of the Petitioner No.1 Association and I am acquainted with all the facts and circumstances of the case and I am duly authorized to swear the present affidavit.
2. That I say that I have read and understood the contents of the accompanying application and say that the facts stated therein are true and correct to my knowledge.

Gautam
DEPONENT

Verification:

I, the above named deponent do hereby verify at New Delhi on this 18th day of May 2015 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Gautam
DEPONENT

IN THE HIGH COURT OF DELHI AT NEW-DELHI
ORIGINAL/APPELLATE CIVIL JURISDICTION
Writ Petition/ No. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ..Plaintiff/Petitioner

Vs.

Union of India & ors. ... Defendants/Respondent

VAKALATNAMA

KNOW ALL to whom these presents shall come that I, Gautam Jain S/o V.K. Jain, of the above named Petitioner No. 1 do hereby appoint **MR. MAHESH AGARWAL, MR. RISHI AGRAWALA, AGARWAL LAW ASSOCIATES, 34, BABAR LANE, FIRST FLOOR, BENGALI MARKET, NEW DELHI-110001"** hereinafter called the Advocate to be My/our Advocate's in the above noted case and authorise him :

To act, appear and plead in the above noted case in this court in any other court in which the same may be tried or heard and also in the appellate courts.

To sign, file, verify and present pleading, applications, appeals, cross-objections or petitions for execution, review, revision, withdrawal, compromise or other petition, replies, objections affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents.

To withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on my/our behalf.

And I/we the undersigned do hereby agree to ratify and confirm acts done by the Advocate or his substitute in the matter my/our own acts as if done by me/us to all intents and purposes.

And I/we undertake that I/we or my/our authorised agent would appear in the court on all hearings and will inform the Advocate for appearance when the case is called.

And I/we the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing, or for any negligence of the said Advocate or his substitute.

And I/we the undersigned do hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. If any costs are allowed for an adjournment, the Advocate would be entitled to the same.

IN WITNESS WHERE OF I/we do hereunto set my/our hand to these presents of which have been understood by me/us this 18th day of May 2015.

ACCEPTED:

(MAHESH AGARWAL) (RISHI AGRAWALA)

D/1501/1997

Gautam
CLIENT

Advocates
Agarwal Law Associates
34, Babar Lane, First Floor
Bengali Market, New Delhi
PH.: 23354330, 23738122 Fax : 23350584

IN THE HIGH COURT OF DELHI AT NEW-DELHI
ORIGINAL/APPELLATE CIVIL JURISDICTION
Writ Petition/ / No. OF 2015

IN THE MATTER OF:

Retailers Association of India & Anr. ..Plaintiff/Petitioner

Vs.

Union of India & Ors. ... Defendants/Respondent

VAKALATNAMA

KNOW ALL to whom these presents shall come that I, Khimji R. Shah, of the above named Petitioner No. 2 do hereby appoint **MR. MAHESH AGARWAL, MR. RISHI AGRAWALA, AGARWAL LAW ASSOCIATES, 34, BABAR LANE, FIRST FLOOR, BENGALI MARKET, NEW DELHI-110001"** hereinafter called the Advocate to be My/our Advocate's in the above noted case and authorise him :

To act, appear and plead in the above noted case in this court in any other court in which the same may be tried or heard and also in the appellate courts.

To sign, file, verify and present pleading, applications, appeals, cross-objections or petitions for execution, review, revision, withdrawal, compromise or other petition, replies, objections affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents.

To withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

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To deposit, draw and receive moneys, cheques and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

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And I/we undertake that I/we or my/our authorised agent would appear in the court on all hearings and will inform the Advocate for appearance when the case is called.

And I/we the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing, or for any negligence of the said Advocate or his substitute.

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IN WITNESS WHERE OF I/we do hereunto set my/our hand to these presents of which have been understood by me/us this ....18th.... day of ......May.......................... 2015.

ACCEPTED:

For AISHWARYA DESIGN STUDIO PVT. LTD.

(MAHESH AGARWAL) (RISHI AGRAWALA)

D/1001/1992

Advocates

K. K. Shah
CLIENT

Director

Agarwal Law Associates
34, Babar Lane, First Floor
Bengali Market, New Delhi
PH. ; 23354330, 23738122 Fax : 23350584

RETAILERS ASSOCIATION OF INDIA

EXTRACT OF THE RESOLUTION(S) PASSED AT MEETING OF THE BOARD MEETING OF THE ASSOCIATION HELD ON 15TH MAY 2015

"**RESOLVED THAT** Retailers Association of India shall file a writ petition before Delhi High Court for seeking a level playing field amongst various retailers / e-tailers in respect of Foreign Direct Investment Regulations in the physical space and in the web world."

"**FURTHER RESOLVED THAT** Mr Gautam Jain, Head-Finance and Advocacy of the Association, be and is hereby authorized to take all steps necessary and to do all or any acts in connection with the said petition, including but not limited to the following:

1. execute, sign, affirm, declare, swear and file the notice(s), vakalatnamas(s), appeal(s), application(s), declaration(s), affidavit(s), counter affidavit(s), rejoinder(s), counter-rejoinder(s), sur-rejoinder(s), authorization(s) as well as all other documents and papers as may be required to be filed before the court or appropriate authorities , as may be necessary;
2. represent the Association, make depositions, make submissions or averments, give evidence, submit and receive papers, proceedings, documents, enforce orders on behalf of the Association;
3. do all such things / acts / deeds / matters and things as she may, in her absolute discretion, deem necessary, expedient, usual or proper."

"**RESOLVED FURTHER THAT** an extract of the resolutions passed by the Governing Board of the Association be forwarded under the signature of chief executive officer of the of the association."

CERTIFIED TRUE COPY

For Retailers Association of India

Chief Executive Officer

111/112, Ascot Centre, Near Hotel ITC Maratha, Sahar Road, Sahar, Andheri (E), Mumbai - 400099
Tel: +91 22 28269527 - 29 Fax: +91 22 28269536 Email: info@rai.net.in Website: www.rai.net.in